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In the Supreme Court of the United States

OCTOBER TERM, 1976

UNITED STATES OF AMERICA, ET AL., PETITIONERS

v.

NICHOLAS J. LARIONOFF, JR., ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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The Solicitor General, on behalf of the United States of America, *et al.*, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, pp. 1a-50a) is reported at 533 F. 2d 1167. The statement of the court of appeals denying the petition for rehearing (App. C, *infra*, pp. 54a-64a) is reported at 533 F. 2d 1188. The opinion of the district court

(App. D, *infra*, pp. 65a-79a) is reported at 365 F. Supp. 140.

JURISDICTION

The judgment of the court of appeals was entered on February 17, 1976. A timely petition for rehearing, and suggestion for rehearing *en banc*, were denied respectively on April 29, 1976 (App. C, *infra*, pp. 53a-54a), and April 21, 1976 (App. B, *infra*, pp. 51a-52a). By order of July 23, 1976, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including August 27, 1976, and by order of August 17, 1976, further extended the time for filing a petition to and including September 26, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, at the time they agreed to extend their enlistments in the United States Navy, respondents and other class members acquired by contract or under the applicable statutes and regulations a vested right to the payment of "variable reenlistment bonuses."

STATUTES AND REGULATIONS INVOLVED

The applicable statutes and regulations are set forth at Appendix F, *infra*, pp. 82a-100a.

STATEMENT

This class action was brought by seven enlisted personnel in the United States Navy to recover reenlistment bonuses to which they believed they were entitled. Alternatively, they sought rescission of the agreements they had executed extending by two years their original four-year enlistments. Six of the respondents had enlisted in the United States Navy in 1968 or 1969, while the seventh, Johnnie S. Johnson, had enlisted on August 28, 1970 (App. A, *infra*, pp. 3a, 28a; App. D, *infra*, pp. 66a-67a).

At the time of their original enlistments, or shortly thereafter, respondents individually decided to participate in the Navy's Advanced Electronics Field (AEF) training program. The AEF program, which was limited to enlisted personnel with a minimum service obligation of six years, provided training in various electronics fields. Service personnel who successfully completed the program earned a specialized service rating, corresponding to the particular skill they had acquired, and were guaranteed advancement in rank and pay grade (App. A, *infra*, pp. 4a-6a).

In order to qualify for the AEF program, respondents agreed to extend their original enlistments. The "Agreement to Extend Enlistment" executed by respondent Larionoff is typical of those executed by other class members, specifying in pertinent part as follows (*id.* at 5a):

> I[,] NICHOLAS JOHN LARIONOFF JR., * * * having enlisted in the Navy of the United States

on 23 JUN 69 for FOUR years, in consideration of the pay, allowances, and benefits which will accrue to me during the continuances of my service, voluntarily agree to extend my enlistment as authorized by Section 5539, of Title 10, United States Code, and the regulations issued pursuant thereto. I voluntarily agreed to extend my enlistment for a period of TWO years from the date of expiration thereof, subject to the provisions and obligations of my said contract of enlistment of which this, my voluntary agreement, shall form a part.
REASON FOR EXTENSION: "Training (Advanced Electronics Field (AEF) Program * * *). I understand this extension agreement becomes binding upon execution and thereafter may not be cancelled except as set forth in BUPERS Manual, Article C-1407." [1]

* * * * *

SUBSCRIBED and sworn to * * * this 9th day of JULY 1969 and this contract is hereby perfected and accepted for and on behalf of the United States. Service thereunder to begin from the date following the date the original contract of enlistment would have expired had it not been extended. This is the FIRST extension of current enlistment.[2]

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[1] The pertinent provisions of BUPERS [Bureau of Personnel] Manual, Article C-1407, are set forth at Appendix F, *infra*, pp. 97a-98a. These provisions have since been superseded by similar provisions appearing at BUPERS Manual, Article 1050150.

[2] In addition to executing agreements to extend their enlistments, respondents and other class members executed documents requesting assignment to the AEF program and acknowledging their six-year commitments (see App. A, *infra*, pp. 5a-6a).

Respondents and other class members subsequently participated in the AEF training program, and completed it successfully. Upon completing the program, they were advanced to the rank of petty officer third class in the "Communications Technician-Maintenance" (CTM) service rating and were advanced in pay grade from "E-3" ($128.70 per month) to "E-4" ($177.90 per month) (see App. A, *infra*, pp. 6a-7a).

At the time respondents executed their extension agreements, 37 U.S.C. 308(a) and (b)—which have since been amended [3]—obligated the Navy to pay a "regular reenlistment bonus" to service personnel who reenlisted after completing basic training but before completing twenty years of active federal service. For personnel reenlisting for the first time, the amount of the regular reenlistment bonus was computed by multiplying their basic monthly pay by the number of years of their reenlistment. In addition, the Navy was authorized by 37 U.S.C. 308(g)—which has since been superseded [4]—to pay a second reenlistment bonus, commonly called a "variable reenlistment bonus" (VRB), to service personnel who were eligible to receive a regular reenlistment bonus and who were designated as having a "critical military skill."

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[3] Armed Forces Enlisted Personnel Bonus Revision Act of 1974, Pub. L. 93-277, 88 Stat. 119; App. F, *infra*, pp. 86a-87a.

[4] Armed Forces Enlisted Personnel Bonus Revision Act of 1974, Pub. L. 93-277, 88 Stat. 119, 37 U.S.C. 308a; App. F, *infra*, pp. 88a-89a.

Although Congress specified the maximum amount that could be paid to any service member in the form of a variable reenlistment bonus,[5] it left the precise amount to be awarded in individual cases to determination "[u]nder regulations to be prescribed by the Secretary of Defense" (37 U.S.C. 308(g) (superseded); App. F, *infra*, p. 85a).[6]

Pursuant to the authority conferred upon him by 37 U.S.C. 308(g), the Secretary of Defense issued regulations (Department of Defense Directive 1304.14 and Department of Defense Instruction 1304.15)[7] governing administration of the VRB program. Those regulations specified, *inter alia*, the criteria to be used in determining whether particular skills were sufficiently "critical" to the various Services to be included in the VRB program as well as the criteria to be used in assigning multiples, from one to four, to those skills in calculating the amount of the variable bonus to be paid to individual service members. The Secretary delegated to the respective Services the task of designating the skills to be in-

[5] 37 U.S.C. 308(g) provided that the maximum amount a service member could be paid in the form of a variable reenlistment bonus could not exceed four times the amount of the regular reenlistment to which that service member was entitled. App. F, *infra*, p. 85a.

[6] Although 37 U.S.C. 308(g) referred only to reenlistments, a service member who extends his enlistment is "entitled to the same pay and allowances as though he had reenlisted" (37 U.S.C. 906; App. F, *infra*, p. 89a).

[7] The pertinent provisions of these regulations are set forth at Appendix F, *infra*, pp. 90a-93a.

cluded in the VRB program, subject to the Secretary's review and prior approval. The Secretary also instructed the Services to conduct an annual review of the retention and manning levels in the various military skills that had been included in the VRB program to determine if the variable bonuses authorized to be paid to reenlistees possessing those skills should be reduced or terminated.

The implementing instructions subsequently issued by the Navy designated by service ratings those skills for which the Navy had a "critical" need and assigned multiples to those skills depending upon the relative urgency of the Navy's need (measured in terms of manpower shortages and the cost of training new personnel) to motivate persons possessing those skills to reenlist or to extend their enlistments. The list of skills included by the Navy in the VRB program, and the multiples assigned to those skills, were posted and revised periodically, and Navy personnel were advised that "the list of eligible ratings is subject to change" (App. F, *infra*, p. 97a).[8]

At the times respondents agreed to extend their enlistments, completed the AEF training program, and were advanced to the CTM service rating, the CTM rating was included on the Navy's list of critically needed skills. But on March 24, 1972, the Navy announced that effective July 1, 1972, the CTM rat-

[8] The pertinent provisions of BUPERS Instruction 1133.18B (December 19, 1968), which was in effect on the dates respondents agreed to extend their enlistments, are set forth at Appendix F, *infra*, pp. 93a-97a.

ing would no longer be designated as a "critical military skill," and the CTM rating was deleted from the Navy's VRB list on the latter date (App. A, *infra*, pp. 6a-7a). None of the respondents had begun to serve the extensions of their enlistments by that time. When respondents, other than respondent Johnson, began serving their two-year enlistment extensions in late 1972 and early 1973, they inquired about their eligibility to receive variable bonuses. The Navy advised them that while they would receive the regular reenlistment bonus provided by former 37 U.S.C. 308(a), they would not receive a variable bonus because the Navy no longer had a "critical" need for personnel with a CTM service rating and the CTM rating had been removed from the Navy's VRB list prior to their having begun to serve their extension periods. The Navy also advised respondents that the extension agreements they had executed were binding and could not be abrogated because of their ineligibility for variable bonuses (*id.* at 7a-8a).

On March 30, 1973, respondents filed suit in the district court under the Tucker Act, 28 U.S.C. 1346 (a)(2), claiming that the Navy's refusal to pay them variable bonuses averaging $3,500 per man constituted a breach of the extension agreements they had executed and that they were also entitled to variable bonuses on a theory of promissory estoppel.[9] On cross

[9] Respondents filed an amended complaint on August 20, 1973, supplementing their original request for a declaratory judgment with requests that the Navy be ordered to pay them variable bonuses or to acquiesce in rescission of the agreements they had executed extending their enlistments (see App. A, *infra*, p. 9a n. 14).

motions for summary judgment, the district court ruled in respondents' favor and ordered the Navy to pay the variable bonuses respondents had requested (App. E, *infra*, p. 81a).[10]

In the view taken by the district court, respondents' entitlement to variable bonuses depended simply upon the application of ordinary principles of contract law. According to the court, since the Navy had held respondents to the obligations specified in their reenlistment contracts, "mutuality of agreement" required that the Navy be bound similarly (App. D, *infra*, p. 74). In determining the nature of the Navy's contractual obligations to respondents, the court analyzed the apparent purposes of the contracts and invoked the "elemental" rule "that a contract must be construed most strongly against the authors[,] which in this case was the government" (*id.* at 75a). The court therefore concluded that respondents were entitled by contract to the variable bonus they would have received had they begun to serve the extensions of their enlistments at the times they executed their

[10] The district court also certified a class and granted respondents' counsel a portion of the class recovery as attorney's fees. The court's judgment described the class as "those enlisted Navy personnel who had (or earned after entering a special training program) a critical military skill, who signed their first term reenlistment contract when that critical military skill was eligible for a Variable Reenlistment Bonus (VRB), but who were denied the VRB because their reenlistment period began to run after the suspension of the VRB [*sic*] on July 1, 1972 * * *" (App. E, *infra*, pp. 80a-81a).

extension agreements. The source of this contractual entitlement, according to the court, was the phrase "in consideration of the pay, allowances, and benefits which will accrue to me during the continuances of my service," contained in the extension agreements (*id.* at 74a-75a).

The government appealed the grant of summary judgment in respondents' favor, and respondents cross-appealed from the district court's refusal to order the Navy to acquiesce in the rescission of their extension agreements.[11] While the appeals were pending, Congress enacted the Armed Forces Enlisted Personnel Bonus Revision Act of 1974, Pub. L. 93-277, 88 Stat. 119 (App. F, *infra*, 85a-89a) (Bonus Revision Act), to become effective on June 1, 1974. The Bonus Revision Act, most of which is now codified at 37 U.S.C. 308 and 308a, eliminated both the regular and variable reenlistment bonuses provided under previously-existing law. In their places, Congress created a new bonus (commonly referred to as a "selective reenlistment bonus" (SRB)), under which the Services were authorized to pay in addition to basic compensation up to $15,000 to service personnel with critically-needed skills who agreed to reenlist or extend their

[11] The government also challenged the district court's certification of this action as a class action, and respondents challenged those portions of the court's order awarding attorney's fees and refusing to compel the Navy to disclose the names of putative class members (App. A, *infra*, p. 9a). We do not here seek review of the district court's class action determination.

enlistments for a minimum of three years.[12] Although the Bonus Revision Act contained a savings clause protecting the eligibility of service personnel for a regular reenlistment bonus,[13] it did not contain a savings clause protecting eligibility for variable reenlistment bonuses.

On February 17, 1976, the court of appeals affirmed the judgment of the district court in all respects (App. A, *infra*, pp. 1a-50a).[14] After having acknowledged that "'[a] soldier's entitlement to pay is dependent upon statutory right'" (*id.* at 10a n. 15; quoting from *Bell* v. *United States*, 366 U.S. 393, 401), the court proceeded to analyze the relevant statutory pro-

[12] The Bonus Revision Act also created a second new bonus, in amounts up to $3,000, payable to any person "who enlists in an armed force for a period of at least four years in a skill designated as critical, or who extends his initial period of active duty in that armed force to a total of at least four years in a skill designated as critical * * *" (37 U.S.C. 308a; App. F, *infra*, p. 88a).

[13] Section 3 of the Bonus Revision Act provides in pertinent part as follows (App. F, *infra*, pp. 88a-89a):

> [A] member of a uniformed service on active duty on the effective date of this Act, who would have been eligible, at the end of his current or subsequent enlistment, for the reenlistment bonus prescribed in section 308(a) or (d) of that title, as it existed on the day before the effective date of this Act, shall continue to be eligible for the reenlistment bonus under that section as it existed on the day before the effective date of this Act.

[14] The court did remand the case to the district court, but solely for the purpose of determining an appropriate fee for the efforts of respondents' counsel on appeal (App. A, *infra*, p. 50a).

visions and implementing regulations. The court noted that the statutory provisions creating the VRB program left to the Secretary of Defense the task of prescribing conditions of eligibility for receipt of such bonuses (App. A, *infra*, p. 17a), and conceded that "[a]t first glance, the applicable military regulations would seem to support the Government's position" (*id.* at 18a). The court finally concluded, however, that respondents' contention that at the time they agreed to extend their enlistments they acquired a vested right to be paid variable bonuses was both reasonable and consistent with congressional intent. The court noted that its conclusion was "reinforced by our obligation to construe most strongly against the Government, as aginst any other drafter of a contract, ambiguous contract terms that are subject to a reasonable and practical interpretation other than that offered by the drafter" (*id.* at 25a).

Since reenlistment bonuses are not actually paid until the service member begins to serve the period of his reenlistment or extension, and since respondent Johnnie S. Johnson had not completed serving the period of his original enlistment prior to the repeal by Congress of those statutory provisions authorizing the payment of variable reenlistment bonuses, the court dealt separately with Johnson's entitlement to such a bonus. Characterizing Johnson's right to a variable bonus as "contractual" (App. A, *infra*, p. 30a), the court stated that "although Congress may constitutionally impair existing contract rights in the exercise of a paramount governmental power such as

the 'War Powers [Clause] * * *, Congress is 'without power to *reduce expenditures* by abrogating contractual obligations of the United States' " (*id.* at 29a, original emphasis; quoting from *Lynch* v. *United States*, 292 U.S. 571, 580). The court then reviewed the legislative history of the Bonus Revision Act and concluded that "Congress was primarily concerned [in that Act] with reducing government expenditures by more narrowly tailoring the reenlistment bonus scheme to actual military requirements" (*ibid*). It therefore held that Johnson's "contractual entitlement to a VRB" had not been affected by Congress' repeal of the statutory provisions authorizing payment of variable reenlistment bonuses (App. A, *infra*, p. 30a).

The court acknowledged that the Fourth Circuit previously had held in *Carini* v. *United States*, 528 F. 2d 738, petition for a writ of certiorari filed May 21, 1976 (No. 75-1695), that service personnel situated similarly to Johnson had not acquired a contractual entitlement to a variable reenlistment bonus, but noted: "We obviously disagree" (App. A, *infra*, p. 30a n. 35). In the statement issued by the court denying the government's petition for rehearing, the court agreed with the government that at least so far as regular pay for enlistees is concerned, enlistment documents "must be construed to incorporate not only the statutes in force at the time the agreement is signed but future changes in those statutes as well" (App. C, *infra*, p. 61a). But the court reemphasized that under its interpretation of the extension agree-

ments, the Navy had promised respondents and others similarly situated "a specific sum (in the form of a VRB) not dependent on future change" (*ibid.*). The court also again acknowledged that on this point its decision was squarely in conflict with the Fourth Circuit's decision in *Carini* (*id.* at 62a).

REASONS FOR GRANTING REVIEW

The court of appeals' holding that respondents are entitled to the payment of variable reenlistment bonuses misconstrues the terms of the extension agreements executed by respondents, is inconsistent with the regulations governing the variable bonus program, and departs from the settled rule limiting the pay to which military personnel are entitled to that provided by applicable statutes and regulations. The effect of this holding is substantially to impair the ability of Congress and the military to adjust military pay to defense needs within practical budgetary restraints.

The court's holding on the variable bonus issue presented here squarely conflicts with the Fourth Circuit's decision in *Carini* v. *United States*, *supra*. The existence of this conflict has complicated significantly the administration of the variable bonus program, encouraged forum shopping and additional litigation, and raised the possibility that the claims of a substantial number of service members with claims to variable bonuses will be resolved in an inconsistent manner.

1. The court of appeals held here that in the absence of an "express limitation on eligibility" (App. A, *infra*, p. 25a) reserving to the Navy, and to Congress, the power to alter in response to changing circumstances the conditions governing eligibility for variable bonuses, respondents were contractually entitled to bonus payments in amounts equal to those in effect at the times they signed their extension agreements. But even ordinary common law contract principles, which "have no place in the area of military pay" (*Bell* v. *United States*, *supra*, 366 U.S. at 401), would require no such "express limitation on eligibility." And the court's conclusion that the extension agreements otherwise created an entitlement to specific amounts of bonuses is at odds with the terms of those agreements. As the Fourth Circuit pointed out in *Carini* (528 F. 2d at 741):

> [The agreements] were said to be in consideration of the "pay, benefits and allowances which will accrue." There is no reference to a VRB. Indeed, there is no specification at all of what pay will accrue. On its face, it seems to us to mean that the enlistee will receive the pay authorized by statute and regulation from time to time as he performs his service. Indeed, the plaintiffs concede that the monthly salary they receive was not fixed at the rates in effect at the time of the contracts. It is subject to the unfettered control of the Congress.

The Fourth Circuit, unlike the court below, correctly concluded that the amount of any reenlistment bonus to which a service member may be entitled—like the

rate of monthly pay—must be determined by reference to the statutes and regulations in effect at the time the right to payment accrues.

The right, if any, to payment of a variable reenlistment bonus accrues at the time an individual service member begins to serve the extended period of his or her enlistment. The Navy's regulations provide that "[m]embers * * * will receive the award level effective on the date of their * * * extension of enlistment, except as [otherwise] provided * * *." Department of Defense Instruction 1304.15, ¶ VI.A.; App. F, *infra*, p. 93a.[15] The date of extension of enlistment is the date the extension becomes operative, which is defined as "the date on which * * * service thereunder commences * * * [*i.e.*] the date next following the normal date of expiration of enlistment * * *." BUPERS Manual Art. C-1407(1)(c); App. F, *infra*, pp. 97a-98a. Thus, the individual service member's entitlement to a variable bonus is controlled by the award level in effect on the first day of the period of extended enlistment. On the various dates respondents began to serve the periods of their extended enlistments, that award level was zero—and the Navy therefore correctly refused to pay variable bonuses to them.

[15] The "[otherwise] provided" clause refers to ¶ V.B. 1. f. of Instruction 1304.15 (App. F, *infra*, pp. 92a-93a), which provides that if the extension agreement is signed after notice has issued that the bonus is to be reduced as of a date certain, only the smaller bonus will be payable even if the extension pursuant to the agreement begins to run before that date.

By the time respondent Johnson began his period of extended enlistment, the statutory authorization for payment of variable reenlistment bonuses had been repealed. The holding below that Johnson was nevertheless entitled to such a bonus conflicts not only with the governing regulations but with this Court's determination that "[a] soldier's entitlement to pay is dependent upon statutory right." *Bell* v. *United States*, *supra*, 366 U.S. at 401.

2. The Navy consistently has administered the variable reenlistment bonus program by measuring entitlement to such a bonus at the time enlisted personnel began to serve the extended period of their enlistments, and has computed the amount of the bonus to be paid in individual cases in light of the circumstances that existed at those times. The disagreement between the Fourth Circuit in *Carini* and the District of Columbia Circuit in this case has created substantial administrative problems (involving, at least for the present, the prospect that a service member's entitlement to a variable bonus will depend upon the judicial district in which he is located or chooses to bring suit).

A number of practical considerations strongly militate in favor of this Court's resolving the question presented by this case and *Carini* at the earliest practicable time.[16] Unless review is granted in *Carini*, the decision there will be dispositive of the claims of

[16] Because of the conflict, and the importance of the question presented, we have not opposed the petition for a writ of certiorari filed in *Carini*.

the approximately 260 enlisted personnel who joined in that case as plaintiffs.[17] The court of appeals' decision in the present case has even broader applicability since it has proceeded as a representative action on behalf of all enlisted personnel situated similarly to respondents (App. E, *infra*, pp. 80a-81a). Moreover, unless review is granted, it is likely that the conflict represented by the decisions in *Carini* and the present case will deepen; the question presented here has also been presented to the Ninth Circuit [18] and to the Second Circuit,[19] and is awaiting decision in 34 additional suits, brought by or on behalf of thousands of service personnel, in various federal district courts.[20] The Navy estimates that resolution of

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[17] See *Carini*, Pet. 14.

[18] *Collins* v. *Rumsfeld*, C.A. 9. Nos. 75-2935, 75-2967, 75-3238, and 75-3559 (three consolidated appeals and cross-appeals). *Collins* has been briefed and argued, but not decided. Recently, the government appealed from another decision granting a serviceman's request for a writ of habeas corpus, releasing him from any further service obligation, because of the Navy's alleged failure to pay him appropriate bonuses. *Borschowa* v. *Middendorf*, C.A. 9, Nos. 76-2370 and 76-2438.

[19] *Caola* v. *United States*, C.A. 2, No. 76-2052. On July 30, 1976, the Second Circuit entered an order in *Caola* extending the time for filing the government's brief on appeal to and including October 29, 1976. But the court expressly provided in its order that the briefing schedule it had set was subject to change depending upon this Court's disposition of the petitions filed in *Carini* and the present case.

[20] *Aas* v. *Schlesinger*, No. 75-1900 (D.S.C., filed October 28, 1975); *Achterhof* v. *Schlesinger*, No. 75-275 (D. Hi., filed August 8, 1975); *Adkins* v. *Carmody*, No. C-74-2535-AJZ

(N.D. Cal., filed August 25, 1975); *Agnew* v. *Schlesinger*, No. 75-1624 (D.S.C., filed September 16, 1975); *Alderfer* v. *Schlesinger*, No. 74-1854 (D.S.C., filed September 12, 1974); *Aprill* v. *Schlesinger*, No. 75-0142 (D. Hi., filed May 14, 1975); *Armour* v. *Schlesinger*, No. 75-0221 (D. Hi., filed July 1, 1975); *Aubin* v. *Rumsfeld*, No. 76-0150 (D.S.C., filed January 23, 1976); *Bailey* v. *Sylvester*, No. 75-9 (D.S.C., filed January 2, 1975); *Beard* v. *United States*, No. 75-561-Civ-J-S (M.D. Fla., filed August 29, 1975); *Bennett* v. *United States*, No. 75-Civ-4025 (S.D.N.Y., filed August 14, 1975); *Birdsale* v. *United States*, No. C75-510S (W.D. Wash., filed August 25, 1975); *Blockus* v. *Schlesinger*, No. 75-962 (D.S.C., filed June 9, 1975); *Borschowa* v. *Middendorf*, No. C75-599S (W.D. Wash., filed August 18, 1975); *Braswell* v. *Schlesinger*, No. C-75-286-S (W.D. Wash., filed April 24, 1975); *Braye* v. *Webster*, No. 574-484 (E.D. Cal., filed September 12, 1974); *Cowen* v. *United States*, No. 75-615-N (E.D. Va., filed December 2, 1975); *Crawford* v. *Mangol*, No. 75-277 (D.S.C., filed February 17, 1975); *Earley* v. *Schlesinger*, No. 75-0216 (D. Hi., filed April 29, 1975); *Gates* v. *United States*, No. H-76-156 (D. Conn., filed April 8, 1976); *Grzeika* v. *Schlesinger*, No. 75-1220 (D.S.C., filed July 16, 1975); *Herbert* v. *United States*, No. 75-1857 (D.S.C., filed October 21, 1975); *Hiland* v. *United States*, No. C-1-75-452 (S.D. Ohio, filed December 9, 1975); *Johnson* v. *Schlesinger*, No. 75-0079 (D. Hi., filed March 21, 1975); *Johnson* v. *Schlesinger*, No. 1288-75 (D.S.C., filed July 23, 1975); *Kleveno* v. *Rogers*, No. C-74-2535-AJZ (N.D. Cal., filed December 4, 1974); *Potter* v. *Schlesinger*, No. 75-794 (D.S.C., filed May 14, 1975); *Ruble* v. *Schlesinger*, No. 75-0272-N (S.D. Cal., filed May 28, 1975); *Salter* v. *Kilpatrick*, No. C-74-2535-AJZ (N.D. Cal., filed April 28, 1975); *Simmons* v. *Schlesinger*, No. 75-29-N (E.D. Va., filed January 29, 1975); *Switzer* v. *United States*, No. 4-75-11 (D. Idaho; filed April 22, 1975); *Upson* v. *United States*, No. 75-593-N (E.D. Va., filed November 24, 1975); *Wilson* v. *Schlesinger*, No. 75-1344 (D.S.C., filed July 31, 1975); *Wood* v. *United States*, No. 75-0382-T (S.D. Cal., filed July 8, 1975).

On July 16, 1976, the district court entered judgment in favor of the plaintiff service members in *Kleveno* v. *Rogers*, *supra*, but stayed execution of the judgment pending a decision by the Ninth Circuit in *Collins* v. *Rumsfeld*, *supra*.

the issue presented here ultimately will affect approximately 36,000 enlisted personnel. Review of the decisions in this case and in *Carini* thus will relieve the lower courts of a tremendous litigative burden, prevent an unnecessary waste of judicial resources, and ensure that enlisted personnel with claims to a variable reenlistment bonus similar to those involved here and in *Carini* will obtain a consistent disposition of those claims.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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SEPTEMBER 1976.

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 74-1211

NICHOLAS J. LARIONOFF, JR., ET AL.

v.

THE UNITED STATES OF AMERICA, ET AL., APPELLANTS

No. 74-1212

NICHOLAS J. LARIONOFF, JR., ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA, ET AL.

Appeals from the United States District Court for the District of Columbia

(D.C. Civil 626-73)

Argued March 3, 1975

Decided February 17, 1976

Stephen Daniel Keeffe for appellants in No. 74-1212 and appellees in No. 74-1211.

Neil H. Koslowe, Attorney, Department of Justice, with whom *Carla A. Hills*, Assistant Attorney General at the time the brief was filed, *Earl J. Silbert*, United States Attorney, and Robert E. Kopp, Attorney, Department of Justice, were on the brief, for appellants in No. 74-1211 and appllees in No. 74-1212. *Morton Hollander*, Attorney, Department of Justice and *Michael A. Katz*, Assistant United States Attorney, also entered appearances for appellants in No. 74-1211 and appellees in No. 74-1212.

Before: RICHARD T. RIVES,* *Senior Circuit Judge for the Fifth Circuit*, WRIGHT and MCGOWAN, *Circuit Judges.*

MCGOWAN, *Circuit Judge*: Congress has been continuously concerned from its inception with the problem of maintaining an adequately manned military establishment for the protection of our national interests. Although one controversial response to that problem has been the operation of a system of compulsory military service, Congress has also—especially in recent years—attempted to provide a sufficient monetary incentive to attract men and women to careers in the military. One approach that has frequently been chosen by Congress is the award of a monetary bonus—recently labeled a "Regular Reenlistment Bonus"—to enlisted personnel who reenlist or extend the period of their obligated service.[1] Since

* Sitting by designation pursuant to Title 18, U.S. Code Section 294(d).

[1] *See* text and note at note 16 *infra.*

1965, Congress has also provided an additional reenlistment bonus—a "Variable Reenlistment Bonus"—to enlisted personnel whose skills are in critically short supply.[2] That Variable Reenlistment Bonus (VRB), which is available to enlisted personnel eligible for a Regular Reenlistment Bonus (RRB), is set by regulation at a multiple of the RRB.[3]

The seven named plaintiffs who filed this class suit in the District Court are enlisted personnel in the United States Navy who claim that they are entitled by contract or under the doctrine of promissory estoppel to receive VRBs equal to four times the amount of their respective RRBs. We conclude that the District Court properly asserted jurisdiction pursuant to 28 U.S.C. § 1346(a)(2),[4] and for the reasons set forth below, we affirm the judgment of the District Court ordering payment of VRBs to the named

[2] *See* text and notes at notes 18-22 *infra.*

[3] For an analysis of the effectiveness of VRB awards in eliminating career manning shortages in critically needed skills, see Comptroller General, Military Retention Incentives: Effectiveness and Administration (B-160096) (1974).

[4] Section 1346(a)(2) of Title 28 provides in relevant part:

> The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:
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> . . . Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

plaintiffs.[5] We affirm the District Court's order certifying the suit as a class action under Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure and awarding attorneys' fees of $14,729. And finally, we remand the case to the District Court for further proceedings concerning an award of attorneys' fees for the efforts of counsel directed to this appeal.

I. Factual Background

On June 23, 1969 plaintiff Larionoff enlisted in the United States Navy for four years. Shortly thereafter, he underwent a series of tests and interviews to determine his appropriate duty assignment. During the course of those interviews with Navy personnel, Larionoff decided to participate in the Advanced Electronic Field (AEF) training program, successful completion of which would place him in the Communications Technician-Maintenance (CTM) service rating. At the time he decided to enter the AEF program, Larionoff was aware that the CTM rating was classified as a "critical military skill" qualifying for a Variable Reenlistment Bonus equal to four times the amount of an enlisted member's Regular Reenlistment Bonus.[6]

Under applicable Navy regulations, the AEF program involved a six year service obligation, and plaintiff Larionoff consequently executed the following "Agreement to Extend Enlistment":

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[5] The District Court opinion is reported at 365 F. Supp. 140 (D.D.C. 1973).

[6] Affidavit of Nicholas J. Larionoff, App. at 17.

> I NICHOLAS JOHN LARIONOFF JR., B 17 77 88, SNJEF, USN having enlisted in the Navy of the United States on 23 JUN 69 for FOUR years, *in consideration of the pay, allowances, and benefits which will accrue to me during the continuances of my service*, voluntarily agree to extend my enlistment as authorized by Section 5539, of Title 10, United States Code, and the regulations issued pursuant thereto. I voluntarily agreed to extend my enlistment for a period of TWO years from the date of expiration thereof, subject to the provisions and obligations of my said contract of enlistment of which this, my voluntary agreement, shall form a part. REASON FOR EXTENSION: "Training (Advanced Electronics Field (AEF) Program—BuPers ltr Pers-B2131-gn-56 of 31 August 1966). I understand this extension agreement becomes binding upon execution and thereafter may not be cancelled except as set forth in BUPERS Manual, Article C-1407."

App. at 134 (emphasis added). On that same day, plaintiff Larionoff executed a document requesting assignment to the AEF program and acknowledging his six year obligation:

> I fully understand that, by virtue of having been enlisted in the U.S. Navy as a SNJC I am guaranteed assignment to either one of a group of service schools or to [*sic*] duty in a specific apprenticeship field upon successful completion of recruit training. I desire to waive my rights guaranteed by my enlistment contract, and I hereby request that my rate be changed in equal pay grade to SNJEF. This change of rate is re-

> quested for the purpose of: Assignment to the advanced electronics field program. The provisions of this program, the category to which my rate will be changed and the six (06) years service obligation have been fully explained to me.

App. at 135.

On March 9, 1970 Larionoff successfully completed the AEF training program and was advanced to the CTM rating and the E-4 pay grade. He executed a document on that date attesting to his advancement to the E-4 pay grade.[7]

Up to this point in time, neither the Navy nor plaintiff Larionoff had reason to complain about the events that had transpired. The complicating factor, however, was that Larionoff still *expected to receive* a Variable Reenlistment Bonus once he entered into his period of extended service on June 23, 1973. The Navy cast some doubt on that expectation when it announced on March 24, 1972 that effective July 1, 1972 the CTM rating would no longer be designated

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[7] I understand and agree that upon my being advanced to pay grade E-4 in accordance with BUPERSINST 1430.14 series, that page 1A ["Agreement to Extend Enlistment"] date 09 JUL 69, which was executed for the purpose of AEF Program, will become binding and will serve to fulfill the obligated service requirements for automatic advancement. I understand that any future cancellation of obligated service requirements for the purpose of AEF Program will not serve as reason for cancellation of page 1A dated 09 JUL 69 except as set forth in BUPERSMAN 1050300.

App. at 130.

as a "critical military skill" eligible for the VRB award. After realizing that the Navy considered him ineligible for a Variable Reenlistment Bonus, Larionoff had his elected representatives in Congress communicate with the Bureau of Naval Personnel concerning his eligibility for the VRB.[8] These efforts were unsuccessful; the Bureau asserted that the CTM service rating had been removed from the list of eligible service ratings, thus precluding payment of a VRB to plaintiff Larionoff.[9]

The other six named plaintiffs[10] have undergone similar administrative processing by the Navy. They all signed extension agreements[11] subsequent to April 20, 1966 (the date the CTM rating was designated as a "critical military skill") extending their enlistments for two years for the purpose of receiving AEF training; executed documents requesting assign-

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[8] Larionoff apparently also asked his elected representatives to pursue the question of rescission of the extension agreement. *See* App. at 152, 163.

[9] The Bureau also stated that the extension agreement was "legal and binding and may not be abrogated based on [Larionoff's] ineligibility for VRB." App. at 161; *see* note 8 *supra*.

[10] Thomas W. Dietz, Joseph R. Tomaino, Lawrence E. White, Paul E. Boudreau, Johnnie S. Johnson, John Clay Smith.

[11] The affidavits in the record of Dietz, Tomaino, White, and Boudreau indicate that the VRB program was explained to them prior to the execution of their extension agreements, but that no one explained to them that the applicable VRB award level could subsequently be changed. *See* App. at 13, 15, 19, 20.

ment to AEF training and acknowledging their six year obligations; received their training, were advanced to the CTM rating and the E-4 pay grade prior to July 1, 1972; executed documents attesting to their advancement to the E-4 pay grade; entered the extension periods of their enlistments subsequent to July 1, 1972 (the date that the "critical military skill" designation for the CTM rating was terminated); and received their Regular Reenlistment Bonuses.[12]

On March 30, 1973, the named plaintiffs filed this class action [13] in the District Court seeking either payment of the VRB award level in effect when the

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[12] At the time briefs were filed in this case, plaintiff Johnson had not yet entered the extension period of his enlistment and consequently was not eligible at that time *to receive* his Regular Reenlistment Bonus.

As to the other six named plaintiffs, it was stipulated by the parties that they could receive their Regular Reenlistment Bonuses without prejudice to their claims for VRBs. App. at 248.

[13] The initial complaint described the class as follows: "All persons in the U.S. Navy who reenlisted for two years additional duty prior to July 1, 1972, in a critical skill training program pursuant to § 308(g) Title 37 U.S. Code, that had a bonus multiple of four prior to the above date and which was subsequently eliminated upon that date." App. at 8. The amended complaint, filed on August 20, 1973, contained a similar, but not identical, description of the class: "All persons in the U.S. Navy who enlisted for an additional period prior to July 1, 1972 in a critical skill training program pursuant to § 308(g), Title 37 U.S. Code, that as a communications technician had a variable bonus multiple of four prior to the above date and which was subsequently eliminated upon that date." App. at 208-09.

extension agreements were signed or rescission of their extension agreements.[14] On September 28, 1973, the District Court certified the action as a class action pursuant to Rule 23(b)(1)(B); granted plaintiffs' motion for summary judgment and ordered payment of VRBs; and awarded plaintiffs' counsel attorneys' fees of $14,729.00 to be obtained from the class recovery. The Government appeals claiming error with respect to both the grant of the motion for summary judgment and the class certification. The plaintiffs cross-appeal with respect to the failure of the District Court (1) to order rescission, (2) to order disclosure by the government of the names of members of the class, and (3) to compensate adequately plaintiffs' attorneys.

II. Entitlement to the Variable Reenlistment Bonus

Plaintiffs offer two theories to support their contention that they are entitled to receive VRBs. They

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[14] Actually, the initial complaint filed on March 30, 1973 sought only a declaratory judgment, an order setting "the case down for prompt hearing to fashion the relief required for each plaintiff," and such other relief "as is necessary and proper." App. at 11. The District Court granted plaintiffs' counsel leave to amend the complaint to avoid dismissal for lack of subject matter jurisdiction, 365 F. Supp. at 146, and it was in the amended complaint that plaintiffs specifically requested either award of VRBs or rescission. App. at 211. In the event the District Court awarded rescission, plaintiffs asked that defendants be ordered to grant each of the plaintiffs an Honorable Discharge pursuant to 10 U.S.C. § 6291. App. at 211.

first argue that they executed their extension agreements "in consideration of the pay, allowances, and benefits" which were to accrue during the period of extended service, *see* slip opinion pages 4-5 *supra*, and that the term "pay" includes awards of VRB. As an alternative ground, plaintiffs maintain that they are entitled to receive VRBs on a theory of promissory estoppel in that they relied to their detriment on oral representations concerning VRB eligibility made by naval personnel attempting to get them to execute extension agreements. We find it unnecessary to reach the issue of promissory estoppel since we find that under applicable military regulations plaintiffs are entitled to VRBs as part of the "consideration" for which they executed extension agreements.[15] Since our interpretation of the relevant regulations depends in part on the legislative history of the statutory provisions delegating to the Secretary of Defense the authority to prescribe eligibility criteria, we turn first to an analysis of the basic statutory provisions establishing the VRB award.

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[15] The Supreme Court has emphasized that "[a] soldier's entitlement to pay is dependent upon statutory right." Bell v. United States, 366 U.S. 393, 401 (1961). All parties to this case recognize that since the applicable statute provides that payment of VRB awards is to be determined according to "regulations prescribed by the Secretary of Defense," the outcome under the plaintiffs' contract theory depends primarily on our interpretation of the applicable regulations.

A. *Statutory Provisions*

As early as 1795, Congress provided by statute for the payment of a "reenlistment bonus" to members of the armed services who reenlisted within a short period following their separation from the service, and eligibility for that bonus was eventually extended to those who agreed to extend the length of their service obligation prior to the expiration of the period for which they had agreed to serve.[16] The method of

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[16] Early statutes providing a monetary bonus upon reenlistment include: Act of Jan. 2, 1795, ch. 9, § 5, 1 Stat. 408 (reenlistment bounty for certain members of the army); Act of Mar. 3, 1795, ch. 44, § 6, 1 Stat. 430 (same); Act of May 30, 1796, ch. 39, § 7, 1 Stat. 484 (same); Act of Jan. 27, 1814, ch. 7, § 4, 3 Stat. 95 (same); Act of July 5, 1838, ch. 162, § 29, 5 Stat. 260, *as amended*, Act of Aug. 3, 1861, ch. 42, § 9, 12 Stat. 288 (same); Act of Aug. 4, 1854, ch. 247, § 2, 10 Stat. 575, *as amended*, Act of Mar. 3, 1875, ch. 131, § 10, 18 Stat. 419, *as amended*, Act of Aug. 1, 1894, ch. 179, § 3, 28 Stat. 216, *as amended*, Act of May 11, 1908, ch. 163, 35 Stat. 110, *as amended*, Act of June 4, 1920, ch. 227, § 27, 41 Stat. 775 (same); Act of Mar. 3, 1863, ch. 75, § 18, 12 Stat. 734 (same); Act of Aug. 24, 1912, ch. 391, § 2, 37 Stat. 590 (same); Act of June 3, 1916, ch. 134, § 34, 39 Stat. 188, *as amended*, Act of June 4, 1920, ch. 227, § 31, 41 Stat. 775 (same); Act of Mar. 3, 1845, ch. 77, § 9, 5 Stat. 795 (additional pay for certain reenlistments in the Marine Corps.); Act of Aug. 5, 1854, ch. 268, 10 Stat. 586 (same); Act of Mar. 2, 1837, ch. 21, § 3, 5 Stat. 153 (additional pay for certain reenlistments in the naval service); Act of Mar. 2, 1855, ch. 136, § 2, 10 Stat. 627, *as amended*, Act of June 7, 1864, ch. 111, 13 Stat. 120, *as amended*, Joint Resolution No. 62, 29 Stat. 476 (1896), *as amended*, Act of Mar. 3, 1899, ch. 413, § 16, 30 Stat. 1008, *as amended*, Act of Aug. 22, 1912, ch. 335, 37 Stat. 331, *as amended*, Act of July 12, 1921, ch. 44, § 2, 42 Stat. 139.

In 1922, Congress enacted a single and more systematic

computing the amount of the bonus was varied, but by 1954 Congress settled on the following formula: the monthly basic pay of the serviceman at the time of discharge or release *times* the number of years specified in the reenlistment contract. *See* Act of July 16, 1954, Pub. L. No. 506, § 2, 68 Stat. 488.[17]

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piece of legislation authorizing reenlistment bonuses to enlisted members of the army, navy, and marine corps. Act of June 10, 1922, ch. 212, §§ 9-10, 42 Stat. 629-30, *as amended*, Act of June 16, 1942, ch. 413, §§ 10, 19, 56 Stat. 364, 369, *as amended*, Act of Sept. 7, 1944, ch. 407, § 8, 58 Stat. 730, *as amended*, Act of June 28, 1947, ch. 162, § 4, 61 Stat. 192. *See also* Act of Aug. 18, 1941, ch. 364, § 2, 55 Stat. 629, *as amended*, Act of June 16, 1942, ch. 413, § 10, 56 Stat. 364, *as amended*, Act of Oct. 12, 1949, ch. 681, § 531(b)(29), 63 Stat. 838. This coordinated approach to reenlistment bonuses was again overhauled in 1949. Career Compensation Act of 1949, ch. 681, § 207, 63 Stat. 811, *as amended*, Act of July 16, 1954, Pub. L. No. 506, 68 Stat. 488, *as amended*, Act of July 25, 1961, Pub. L. No. 87-103, 75 Stat. 219. These provisions were enacted into positive law in 1962 and *codified as* 37 U.S.C. § 308, *see* Act of Sept. 7, 1962, Pub. L. No. 87-649, 76 Stat. 467, and were restated without substantive change in 1968, *see* Act of Oct. 22, 1968, Pub. L. No. 90-623, §§ 3(1), 6, 82 Stat. 1314-15.

In 1974, Congress amended the relevant statutory provisions to limit eligibility for the reenlistment bonus to those servicemen who possess skills designated as "critical" by the Secretary of Defense. Armed Forces Enlisted Personnel Bonus Revision Act of 1974, § 2(1), 37 U.S.C. § 308 (Supp. IV, 1974). The 1974 amendments also contained a grandfather clause preserving the options of those servicemen eligible for a reenlistment bonus on the date before the effective date of the 1974 amendments. Armed Forces Enlisted Personnel Bonus Revision Act of 1974, Pub. L. No. 93-277, § 3, 88 Stat. 121.

[17] The formula in text applies only to a serviceman's *first* reenlistment; bonus awards for subsequent reenlistments were

The Department of Defense eventually recognized that the statutory formula was inefficient since it failed to vary the monetary incentive for reenlistment according to the needs of the armed services for personnel with particular skills. In other words, if a branch of the armed services was adequately manned except for a critical shortage of communications technicians, that branch would nevertheless be prohibited by statute from offering communications technicians a stronger incentive in the form of a larger reenlistment bonus. Consequently, the President's 1965 legislative proposals to Congress concerning increased pay for servicemen included a recommendation that the Department of Defense be authorized to award an additional flexible reenlistment bonus to enable the Department to provide a strong reenlistment incen-

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calculated according to slightly different formulae producing progressively smaller bonus awards. The *Variable* Reenlistment Bonus awards at issue in this case are a function of the *Regular* Reenlistment Bonus awards for first time reenlistments only. Act of August 21, 1965, Pub. L. No. 89-132, § 3, 79 Stat. 547, *as amended*, Act of Oct. 22, 1968, Pub. L. No. 90-623, §§ 3(1), (5), 82 Stat. 1314-15, *as amended*, 37 U.S.C. § 308 (Supp. IV, 1974).

It is also important to note that Congress has often established a limitation on the total amount that could be paid to an enlisted member in the form of regular reenlistment bonuses. *See, e.g., Career Compensation* Act of 1949, ch. 681, § 207(a), 63 Stat. 811. The Variable Reenlistment Bonus does not count toward this statutory maximum. Act of August 21, 1965, Pub. L. No. 89-131, § 3, 79 Stat. 547, *as amended*, 37 U.S.C. § 308 (Supp. IV, 1974).

tive to those personnel whose skills were in short supply."[18]

The Defense Department urged both the House and Senate Armed Services Committees to act favorably on this Variable Reenlistment Bonus incentive provision:

> Additional reenlistments are needed in specialties accounting for about 40 percent of total enlisted force strength in order to achieve all of the services' manning objectives. The problem is much more serious in a smaller portion of our force. *In a few of the most critically undermanned specialities, comprising about 5 percent of our force strength, losses of $10,000 or more occur whenever a first termer fails to reenlist and operational capability suffers because of service shortages of careerists.* In these skills, additional reenlistment incentives are clearly needed.
>
> The most attractive way to provide a strong reenlistment incentive to first termers in a small

[18] The President proposed adding the following provision to section 308 of Title 37 of the United States Code:

> (g) Under regulations to be prescribed by the Secretary of Defense, or the Secretary of the Treasury with respect to the Coast Guard, a member who is designated as having a critical military skill and who is entitled to a bonus computed under subsection (a) upon his first reenlistment may be paid an additional amount not more than four times the amount of that bonus. An amount paid under this subsection does not count against the limitation prescribed by section (c) of this section on the total amount that may be paid under this section.

H.R. Doc. No. 170, 89th Cong., 1st Sess. 12 (1965).

> part of the force is through a variable reenlistment bonus. *A reenlistment bonus concentrates retention money at the reenlistment decision point, thereby getting the most drawing power per retention dollar.* A variable bonus can be tailored to fit particular skill retention requirements and can be changed as those requirements change since there are no express or implied commitments about future payments. The present reenlistment bonus does not discriminate among skills and thereby does not help solve the selective retention problem.

H.R. Rep. No. 549, 89th Cong., 1st Sess. 47-48 (1965) (emphasis added). *See* S. Rep. No. 544, 89th Cong., 1st Sess 18 (1965); Hearings on H.R. 5725 and H.R. 8714 Before the House Comm. on Armed Services, 89th Cong., 1st Sess., ser. 13, at 2545, (1965) (Statement of then Secretary McNamara). Both committees approved the following Variable Reenlistment Bonus award provision:[19]

> Under regulations to be prescribed by the Secretary of Defense, or the Secretary of the Treasury with respect to the Coast Guard when it is not operating as a service in the Navy, a member who is designated as having a critical military skill and who is entitled to a [Regular Re-

[19] The House committee modified the language of the proposed VRB provision to provide for payment of the VRB in yearly installments, thus easing the tax impact on the recipient. H.R. Rep. No. 549, 89th Cong., 1st Sess. 48 (1965). Except for that modification, the language approved by the committees is essentially the same as that proposed by the President. *See* note 18 *supra*.

> enlistment] bonus . . . upon his first reenlistment may be paid an additional amount not more than four times the amount of that bonus.

In the course of the floor debate over what was to became quite clear the Department of Defense had convinced the Congress that the VRB provision was cost-justified since it would save the Government the cost of training a replacement whenever a first term enlisted member decided to reenlist.[20] *See, e.g.*, 111 Cong. Rec. 17206 (1965) ("[T]he career motivation that will be generated among the hard core elements, specifically the highly technically trained people throughout the services, will more than make up in actual dollars saved for the cost of the legislation.") (remarks of Representative Morton); *id.* at 17206 ("It is just plain good personnel planning to provide a $4,000 bonus to encourage reenlistment rather than pay $10,000 to train a replacement.") (remarks of Representative Bennett); *id.* at 17209 (remarks of Representative Dole); *id.* at 20034 (remarks of Senator Russell). And it is also clear that Congress viewed the VRB provision as an effective incentive to be brought to the attention of enlisted personnel at the point in time when they are choosing whether and how long to continue military service.[21] *See, e.g.*, *id.* at 17201 ("The [variable reenlistment] bonus would channel additional pay into these specialties. It offers the incentive toward career service at just

[20] *See* Deschler v. United States, 203 Ct. Cl. 477, 483-84 (1974); 47 Comp. Gen. 414, 416 (1968).

the time that it will be most effective, when an individual decides whether or not to reenlist.") (remarks of Representative Nedzi).

With these objectives in mind, Congress enacted the VRB provision as recommended by the House and Senate committees, delegating to the Secretary of Defense the authority to issue regulations for the administration of the VRB program. Act of August 21, 1965, Pub. L. No. 89-131, § 3, 79 Stat. 547, *as amended*, Act of Oct. 22, 1968, Pub. L. No. 90-623, §§ 3(1), 5, 82 Stat. 1314-15, *as amended*, 37 U.S.C. § 308 (Supp. IV, 1974).

B. *Military Regulations* [22]

In interpreting the regulations issued by both the Department of Defense and the Department of the Navy with respect to the VRB program, it is important to emphasize the narrow question at issue. The Government takes the position that under applicable military regulations eligibility for a Variable Reenlistment Bonus attaches *at the date of actual entry* into the reenlistment or extension period. Brief at 21. The Government does not argue that appellants would not have been entitled to a VRB if the CTM

[21] *See* Parker v. United States, 198 Ct. Cl. 661, 666, 461 F.2d 806, 809 1972).

[22] The regulations discussed in this section of the opinion are recent regulations imprinted in the Appendix filed with the court. We are told in the Government's brief that similar requirements were contained in earlier versions of the regulations. Brief at 21 n. 13; *see* App. at 89.

service rating had been designated as a critical military specialty when they entered their periods of extended service.[23] Nor does the Government argue that appellants are not entitled to the Regular Reenlistment Bonus that at least until 1974 was automatically paid upon extension or reenlistment.[24] The Government simply maintains that appellants are entitled only to the VRB in effect when they actually entered into the period of extended service, which for each appellant amounts to zero.

At first glance, the applicable military regulations would seem to support the Government's position. The Department of Defense Directive prescribing policies for award of the VRB deals specifically with the question of reduction and termination of VRB awards:

> When a military skill is designated for reduction or termination of award an effective date for reduction or termination of awards shall be established and announced to the field at least 90 days in advance. All awards on or after that effective date in military skills designated for reduction of award level will be

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[23] In its brief, the Government concedes that the term "pay" in the extension agreement includes the VRB. Brief at 16. Thus, if the Navy had *reduced* rather than *terminated* the VRB award level for the CTM rating, the Government would apparently contend that appellants were entitled only to the lower VRB award level.

[24] *See* note 12 *supra*.

> made on or after the effective date in military skills designated for termination of awards.

DOD Directive 1304.14, ¶ IV.F (Sept. 3, 1970). Of course, that Directive is at best ambiguous, in that it is not clear whether a VRB is "awarded" when an enlisted member signs an agreement to extend enlistment or when he or she actually begins to serve the period of extension. Section IV.D.2 of the Directive, however, tells us that "[s]pecific provisions for individual eligibility of enlisted members for receipt of awards" are contained in a separate Department of Defense Instruction.

That separate regulation also addresses the question of reduction and termination of awards:

> Members serving in a military specialty designated for reduction or termination of award under the provisions of subsection IV.F. of reference (a), will receive the award level effective on the date of their reenlistment or extension of enlistment, *except as provided in paragraph V.B.1.f. above.*

Department of Defense Instruction 1304.15, ¶ VI.A (Sept. 3, 1970) (emphasis added). Were it not for the "except" clause, this regulation would also apparently support the Government's interpretation of the VRB program.[25] The question thus becomes

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[25] Actually, it would be possible to read "extension of enlistment" to mean, at least for the purpose of the quoted paragraph, the date on which the extension agreement is signed. Our interpretation of paragraph V.B.1.f., however, makes it unnecessary to clarify that ambiguity.

whether "paragraph V.B.1.f." leads to a different result.

The relevant portion of paragraph V.B.1. provides that "[a]n enlisted member is eligible to receive a Variable Reenlistment Bonus if he . . .

> f. Attains eligibility prior to the effective date of termination of awards in any military specialty designated for termination of the award. Member must attain eligibility prior to the effective date of a reduction of award level to be eligible for the higher award level. *Eligibility attained through any modification of an existing service obligation, including any early discharge granted pursuant to 10 U.S.C. 1171, must have been attained prior to the date the authority approving the modification was notified of the prospective termination or reduction of award in the military specialty.*

(Emphasis added.) And the regulations issued by the Department of the Navy indicate that an extension of enlistment qualifies as a form of "modification of an existing service obligation":

> Member must attain eligibility prior to the effective date of a reduction of award level to be eligible for the higher award level. Eligibility attained through an early discharge for the purpose of immediate reenlistment, *or extension of enlistment, or other modification of an existing service obligation* including any early discharge granted pursuant to article 3840240 of reference (d) (discharge within 3 months of expiration of active obligated service) shall be attained prior

> to the date the authority approving the modification is notified or the prospective termination or reduction of award in the [service rating]. This is the date a command receives the Bureau of Naval Personnel directive announcing termination or reduction of awards in the [service rating].

BUPER INST 1133.18E, ¶ 7.h (Mar. 23, 1972) (emphasis added).

Paragraph V.B.1.f. of the Defense Instruction and paragraph 7.h. of the Navy Instruction were apparently designed to prevent enlisted members from receiving the higher award level of a VRB scheduled for reduction merely by modifying their service obligations *after* learning of the planned reduction but *prior* to its effective date. Thus, if the Navy announced on March 24, 1972 that a VRB with a multiple of four was to be reduced to a multiple of two for the CTM rating effective July 1, 1972, an enlisted member extending his or her service obligation after March 24, 1972 [26] and entering on the period of extension prior to July 1, 1972 would nevertheless be entitled only to the lower VRB award level with a multiple of two. Only those entitled personnel modifying their service obligations prior to March 24, 1972 would have attained eligibility for the higher VRB award level with a multiple of four.

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[26] Actually, the appropriate date is the date the command receives the Navy directive announcing termination or reduction of awards in relevant service ratings. BUPER INST 1133.18E, ¶7.h (Mar. 23, 1972).

The application of these regulations to appellants leads us to conclude that they are entitled to the VRB award level in effect on the date they signed their respective agreements to extend enlistment.[27] Those agreements were executed prior to March 24, 1972, the date on which the Navy announced termination effective July 1, 1972 of the VRB award for the CTM rating. If appellants are otherwise entitled to receive a VRB award, as the Government concedes they are, that award is not to be determined according to the award level in effect on the date they actually entered into their respective periods of extension, but rather according to the award level in effect when they executed their extension agreements.

To hold otherwise would undermine the explicit language of paragraphs V.B.1.f. and 7.h. of the appropriate regulations, in that neither those who extended their enlistments *on or after* March 24, 1972 nor those who extended their enlistments *before* March 24, 1972 could attain eligibility for the higher award if they were to begin their extended service on a date after July 1, 1972. The paragraphs referred to above obviously contemplate a situation in which en-

[27] The applicable military regulations prescribe a number of conditions that must be satisfied before an enlisted member can receive his Variable Reenlistment Bonus. Our decision does not eliminate the other conditions established by the military departments. We merely hold that an enlisted member who extended his or her service obligation and who is *otherwise qualified* for a VRB award—as the Government concedes these plaintiffs are—is entitled to the VRB award level in effect on the date the extension contract is signed.

listed personnel *attain eligibility* prior to the point at which they enter into periods of extended service.

Moreover, the Government's interpretation would lead to results clearly at odds with the explicit congressional objectives. For example, under the Government's approach an enlisted member who signed an extension agreement when the VRB award level was at a multiple was set at four would receive the *higher* award level. Despite the fact that a bonus with a multiple of two was a sufficient reenlistment incentive for that enlisted member, the Government would apparently award him a windfall in the form of a bonus with a multiple of four.

The Government's interpretation would also frustrate congressional objectives by complicating the decision whether to reenlist. The legislative history indicates that Congress intended to offer enlisted personnel a specific sum [28] in addition to the automatic Regular Reenlistment Bonus as an incentive to reenlist in skill areas in critically short supply. Under the Government's approach, an enlisted member (with a skill designatee as critical) considering extension of service would have to weigh not the current VRB award level, but the VRB award level in effect on the date on which he or she would actually begin serving the period of extension. The latter VRB award level

[28] The sum is "specific" in the sense that it is set by military authorities at some multiple of the Regular Reenlistment Bonus. As noted above, the multiple will vary among service ratings according to the need for enlisted personnel with particular skills.

would be a function of the Navy's manpower needs at that time as well as the extent to which the prospect of an uncertain VRB award level had already helped to satisfy those requirements. Information concerning those factors would rarely be readily accessible to enlisted personnel making a reenlistment or extension decision, and we find no evidence in the legislative background of the 1965 amendments to warrant the conclusion that Congress intended enlisted personnel to make reenlistment decisions in the face of such uncertainty.[29]

The Government authored these extensions contracts, and it could easily have inserted a provision limiting an enlisted member's VRB eligibility to the award level in effect on the date of actual entry into the period of extended service. Undoubtedly, if such a provision had been included, the Navy would have witnessed fewer extensions of enlistment.[30] But there

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[29] Indeed, Navy regulations governing reenlistment interviews for potential reenlistees eligible for the VRB require coverage of the "[a]dvantages of early reenlistment to obtain present amount of VRB vice uncertainty of future value of the VRB." BUPER INST 1133.18E, ¶ 9.a.(6) (Mar. 23, 1972). *See also* note 30 *infra*.

[30] *See, e.g.*, Affidavit of Thomas W. Dietz, App. at 19 ("I would have definitely not signed the Extension of the Enlistment contract if the personnel involved in my counseling procedure had presented the possibility that the VRB could be withdrawn on a moments [*sic*] notice."). Such a contract provision would inform enlisted personnel that they would be making reenlistment decisions in the face of conditions of uncertainty. We note that as a result the effectiveness of the VRB program would depend not only on the expected value of the VRB award at the time of actual entry into the period of extended service, but also on the attitudes of enlisted personnel toward risk. Friedman & Savage, *The Utility Analysis of Choices Involving Risk*, 56 J. Pol. Econ. 279 (1948); *see* R. Posner, Economic Analysis of Law 72-73 (1972) (discussing the relevance of attitudes toward risk in the accident field). In effect, the Government's interpretation of the regulations (or a contract provision making that interpretation explicit) provides enlisted personnel with an opportunity to purchase a "lottery ticket" by signing agreements to extend enlistment; the "lottery ticket" offers some probability of a VRB award equal to the award level in effect at the time the agreement is signed, some probability of a VRB award level less than that in effect at the time of the signing, and some probability of no VRB award at all. And enlisted personnel who are risk averse—that is, they are willing to pay a premium to avoid risk—might well decide against such a gamble, whereas the same personnel would be willing to extend their enlistment in exchange for a contractual promise by the government to offer a sum certain on the date of entry into extended service.

is no express limitation on eligibility, and the Government is therefore bound by the actual contract terms and the applicable military reglations. Although we recognize that these rather complex military regulations are not free from ambiguity, the factors outlined above lead us to conclude that under a reasonable interpretation of the contracts the appellants are entitled to the VRB award level in effect at the time they signed their extension contracts. Our conclusion in that regard is reinforced by our obligation to construe most strongly against the Government, as against any other drafter of a contract, ambiguous contract terms that are subject to a reasonable and practical interpretation other than that offered by the drafter. *United States* v. *Seckinger*, 397 U.S. 203,

210 (1970); 3 A. Corbin, Contracts § 559 (1960). Since the regulations at issue recognize that eligibility can be attained prior to actual entry into the period of extended service, and since the Government's interpretation of the regulations, unlike that of the plaintiffs, is at odds with congressional intent,[31] we construe the contracts to mean that appellants are entitled to the VRB award level in effect when they signed their extension agreements.[32]

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[31] The Government's current interpretation also stands in stark contrast to the Defense Department's recommendation to Congress that "[a] reenlistment bonus concentrates retention money at the reenlistment decision point." *See* slip opinion page 13 *supra*. The two statements can be reconciled only if the date of actual entry into the extension period is a "decision point,"—that is, a point at which plaintiffs could decide not to continue military service. But the Navy has emphasized, and the Government presently contends, that the extension agreements are binding and that the date of actual entry is not a "decision point" for these plaintiffs.

[32] When considered in the context of the entire VRB regulatory scheme, the Government's interpretation of VRB eligibility requirements has the potential of producing serious inequities. Under the relevant Department of Defense Directive, the Secretaries of the Military Departments and the Assistant Secretary of Defense are directed to conduct "an annual review of the retention and career manning situation in any military specialty that has attained or is projected to attain a *career manning level* of more than 105 percent." DOD Directive 1304.14, ¶ IV.F.1 (Sept. 3, 1970) (emphasis added). If, taking into account projected retention and career manning in the absence of the VRB award level, the award is no longer needed to avoid a significant shortage in career manning, the VRB for that specialty must be designated for reduction or termination. *Id.* at ¶ IV.F.1. a, b.

The *career manning level* is the ratio of the number of *Career personnel* in a military specialty to the career requirements of that specialty. *Id.* at ¶ III.K. And *career personnel* is defined to include "first term personnel who are serving in an enlistment, as extended, *or* an extension of enlistment that will total six or more years of active service." *Id.* at ¶ III.I (emphasis added). Consequently, appellants, by extending their enlistments at a time when the VRB award level was set at a multiple of four, may have contributed to the very satisfaction of Navy personnel requirements that led to termination of the VRB for the CTM rating. Indeed, in explaining to plaintiff Larionoff's elected representatives why he was ineligible for the VRB award, the Chief of Naval Personnel wrote: "Although the communications technician (maintenance) rating was formerly VRB eligible, *the most recent review of the manning levels* dictated that it be removed from the eligibility list." App. at 149 (emphasis added).

C. *The 1974 Repeal of the Variable Reenlistment Bonus Program*

Effective June 1, 1974, Congress repealed the statutory provisions providing for the Regular Retirement Bonus and the Variable Reenlistment Bonus and subsubstituted a provision authorizing a new "Selective Reenlistment Bonus" (SRB). Armed Forces Enlisted Personnel Bonus Revision Act of 1974, Pub. L. No. 93-277, § 2(1), 37 U.S.C. § 308 (Supp. IV, 1974).[33] The 1974 amendments specifi-

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[33] The new statute provides in relevant part:

> (a) A member of a uniformed service who—
>
> (1) has completed at least twenty-one months of continuous active duty (other than for training) but not more than ten years of active duty;
>
> (2) is designated as having a critical military skill by the Secretary of Defense, or by the Secretary of Transportation with respect to the Coast

cally provide that an enlisted member on active duty on the effective date of the amendments "who would have been eligible, at the end of his current or subsequent enlistment, for the [Regular Reenlistment Bonus] as it existed on the day before the effective date of [the amendments] shall continue to be eligible for the [RRB] as it existed on the day before the effective date of [the amendments]." But a similar savings clause was not enacted for enlisted personnel eligible for a Variable Reenlistment Bonus before the effective date of the 1974 amendments. Consequently, although it has not been raised by any of the parties, we are confronted with the question whether named plaintiff Johnson, who was scheduled to enter his period of extended service *after* the effective date of the 1974 amendments, is no longer entitled to receive a VRB.[34]

Guard when it is not operating as a service in the Navy;

(3) is not receiving special pay under section 312a of this title; and

(4) reenlists or voluntarily extends his enlistment in a regular component of the service concerned for a period of at least three years;

may be paid a bonus, not to exceed six months of the basic pay to which he was entitled at the time of his discharge or release, multiplied by the number of years, or the monthly fractions thereof, of additional obligated service, not to exceed six years, or $15,000, which ever is the lesser amount. Obligated service in excess of twelve years will not be used for bonus computation.

[34] We are informed by the Government's brief that plaintiff Johnnie S. Johnson was scheduled to begin his period of extended service on August 28, 1974. Brief at 7 n. 9.

Since contractual rights against the government are property interests protected by the Fifth Amendment, Congressional power to abrogate existing government contracts is narrowly circumscribed. *Perry* v. *United States*, 294 U.S. 330 (1935); *Lynch* v. *United States*, 292 U.S. 571 (1934); *see Federal Housing Administration* v. *Darlington, Inc.*, 358 U.S. 84, 97-98 (1958) (Harlan, J., dissenting). And although Congress may constitutionally impair existing contract rights in the exercise of a paramount governmental power such as the "War Powers," U.S. Const. art. I, § 8, cl. 11, 12, 14, Congress is "without power *to reduce expenditures* by abrogating contractual obligations of the United States." *Lynch* v. *United States, supra*, 292 U.S. at 580 (emphasis added); *see id.* at 579. *Compare Schultz* v. *Clifford*, 303 F. Supp. 965 (D. Minn. 1968), *aff'd*, 417 F.2d 775 (8th Cir. 1969), *cert. denied*, 397 U.S. 1007 (1970); *Pfile* v. *Corcoran*, 287 F. Supp. 554 (D. Colo. 1968).

Although the stated purpose of the 1974 amendments was to "provide authority to grant enlistment and reenlistment bonuses to enlisted personnel on a selective basis to fill critical and shortage skill requirements in the armed services in an all-volunteer environment," H.R. Rep. No. 93-857, 93d Cong., 2d Sess. 3 (1974), our review of the legislative history leads us to conclude that the Congress was primarily concerned with reducing government expenditures by more narrowly tailoring the reenlistment bonus scheme to actual military requirements. *See* S. Rep. No. 93-659, 93d Cong., 2d Sess. (1973); H.R. Rep.

No. 93-857, 93d Cong., 2d Sess. (1974); H.R. Conf. Rep. No. 93-985, 93d Cong., 2d Sess. (1974). The Department of Defense specifically recommended the 1974 amendments to Congress as "an opportunity to save money while simultaneously improving our management of reenlistment incentives." S. Rep. No. 93-659, 93d Cong., 2d Sess. 8 (1973); H.R. Rep. No. 93-857, 93d Cong., 2d Sess. 9 (1974).

Since there is absolutely no basis in the legislative history to justify a conclusion that Congress was exercising some paramount power enabling it to abrogate existing contract rights, plaintiff Johnson's contractual entitlement to a VRB stands unimpaired after the 1974 amendments.[35]

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[35] This identical question was recently presented by different groups of naval enlisted personnel to the District Court for the Eastern District of Virginia in *Carini* v. *United States*, Civil No. 74-88-NN (Jan. 7, 1975), to the District Court for the District of Hawaii in *Collins* v. *Schlesinger*, Civil No. 75-0053 (May 20, 1975), to the District Court for the Southern District of California in *Aiken* v. *United States*, Civil No. 75-0062-N (Aug. 26, 1975), and to the District Court for the District of Connecticut in *Caola* v. *United States*, Civil No. H-75-110 (Dec. 4, 1975). Those courts reached the same conclusion as we reach today.

We are aware that the Fourth Circuit has reversed the District Court decision in *Carini* on the ground that the 1965 statute was not "a part of the reenlistment agreement," slip opinion at 6, and that the "contract . . . anticipated possible statutory change," slip opinion at 8. Carini v. United States, No. 75-1399 (Dec. 19, 1975). We obviously disagree. The Government argued that the case before us turns primarily on the construction of the applicable military regulations. Brief at 15. And as our textual discussion indicates, we construe those regulations to mean that VRB eligibility attaches when an extension agreement is signed. Thus, under our view of the case, the contract clause did not anticipate possible statutory changes and an explicit clause would have been necessary to achieve that effect given existing regulations. *See* slip opinion pages 21-22 *supra*.

The Fourth Circuit opinion in *Carini* also places some emphasis on the Congressional intent evidenced in a section of the Conference Report accompanying the 1974 statute ironically labeled "Clarification of interpretation of bill language." H.R. Rep. 93-985, 93d Cong., 2d Sess. 4 (1974). Even if we were to agree that the language in the report indicates that Congress intended to allow the members of this class to become eligible for the new Selective Reenlistment Bonus "if, during the initial enlistment period, the old reenlistment extension agreements are cancelled and new ones executed calling for a longer period of extended service," slip opinion at 6, we would still be unable to find any reason to justify congressional abrogation of existing contract obligations to members of the class.

D. *The Issue of Rescission of the Extension Agreements*

The amended complaint, asserting jurisdiction under the Tucker Act, 28 U.S.C. § 1346(a)(2), asked that the Government "be ordered to pay to each of the plaintiffs the bonus provided by his contract *and/or the contracts of the plaintiffs be deemed rescinded and declared of no further force and effect.*" App. at 211 (emphasis added). Plaintiffs now maintain that the District Court erred when it refused to declare the contracts rescinded.

Rescission is an equitable remedy, and we must keep in mind that courts exercising Tucker Act jurisdiction generally do not have jurisdiction over suits for equitable relief against the United States. *Rich-*

ardson v. *Morris*, 409 U.S. 464, 465 (1973); *see Lee* v. *Thorton*, 420 U.S. 139 (1975). The Act authorizes jurisdiction only over actions for money judgments. *United States* v. *King*, 395 U.S. 1, 2-3 (1969); *see United States* v. *Jones*, 131 U.S. 1 (1889). There nevertheless seems to be a narrow "exception" to this limitation on Tucker Act jurisdiction, in that "[w]here the relief is monetary, [courts exercising Tucker Act jurisdiction] can call upon such equitable concepts as rescission and reformation to help . . . reach the right result." *Quinault Allottee Association* v. *United States*, 453 F.2d 1272, 1274, n.1, 197 Ct. Cl. 134, 138 n.1 (1972); *see United States* v. *Milliken Imprinting Co.*, 202 U.S. 168, 173-74 (1906).

We have serious doubts as to whether the plaintiff's request for judicial rescission of their extension contracts falls within this narrow exception since it is hard to conceive of how granting that request would be "in aid of [a money] judgment." *Blanc* v. *United States*, 244 F.2d 708, 709 (2d Cir. 1957). *Compare C. N. Monroe Manufacturing Co.* v. *United States*, 143 F. Supp. 449 (E.D. Mich. 1956); *Kemp* v. *United States*, 38 F. Supp. 568 (D. Md. 1941). *See also Universal Transistor Products Corp.* v. *United States*, 214 F. Supp. 486 (E.D.N.Y. 1963). We find it unnecessary to resolve these doubts one way or the other, however, since on the basis of the record before us we would find it impossible to sustain a judicial decree of rescission. The payment of VRBs to the plaintiffs is an adequate legal remedy, and we have been offered no evidence indicating that

there are exceptional circumstances in this case that justify the grant of equitable relief.

We therefore conclude that the District Court properly limited the relief in this case to the award of VRBs.

III. Class Action Issues

On September 28, 1973, in the same order granting plaintiffs' motion for summary judgment, the District Court certified this suit as a class action under Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure.[35] The Government argues on this

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[35] We note that the Government has not challenged on this appeal the merits of the District Court's ruling with respect to the maintenance of this suit as a class action under Rule 23(b)(1)(B). That subdivision covers cases in which "the prosecution of separate actions by or against individual members of the class would create a risk of . . . adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests." For a suit to qualify as a class action under this subdivision, it is not necessary for the nonclass judgment to be technically dispositive of the interests of the other members of the putative class, *see* 7A C. Wright & A. Miller, Federal Practice and Procedure: Civil § 1774, at 14 (1972), but it must as a practical matter conclude the interests of those members.

It has been held that if the only practical effect which the putative class action would have on the interests of other members of the class is a *stare decisis* effect on actions filed in the same jurisdiction and perhaps a persuasive effect on actions filed in other jurisdictions, the suit would not qualify as a class action pursuant to Rule 23(b)(1)(B). *E.g.*, Lamar v. H & B Novelty & Loan Co., 489 F.2d 461, 467 (9th Cir. 1973); Richardson v. Hamilton Int'l. Corp., 62 F.R.D. 413

(E.D. Pa. 1974). As the Ninth Circuit recently observed, allowing the *stare decisis* consequences of an individual action to supply the practical disposition or substantial impairment of the rights of the class "would make the invocation of Rule 23(b)(1)(B) unchallengeable" in cases meeting the class action prerequisites of Rule 23(a). LaMar v. H & B Novelty & Loan Co., *supra*, 489 F.2d at 467.

In deciding not to challenge the merits of the District Court's ruling, the Government apparently concludes that this case meets the practical effect standard of Rule 23(b)(1)(B) precisely because the Government, unlike private litigants, is required to treat all class members alike. *See, e.g.*, Guadamuz v. Ash, 368 F. Supp. 1233, 1235 (D.D.C. 1973) (action maintained as a class action under Rule 23(b)(1)(A), 23(b)(1)(B), and 23(b)2)); Pennsylvania Ass'n for Retarded Children v. Pennsylvania, 343 F. Supp. 279, 291-92 E.D. Pa. 1972) (defendant class action maintained pursuant to Rule 23(b)(1)(B)).

To the extent that there might be doubt that this suit qualifies for class action status under Rule 23(b)(1)(B), we note that the suit would appear to qualify for class action status under Rule 23(b)(1)(A), which covers cases in which the prosecution of separate actions by or against members of the class would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for the party opposing the class. *See* Maricopa County Mun. Water Con. Dist. v. Looney, 219 F.2d 529 (9th Cir. 1955) (cited in Advisory Committee Note to Rule 23(b)(1)(A), 39 F.R.D. 100 (1966)); Guadamuz v. Ash, *supra*. *See generally* 7A C. Wright & A. Miller, *supra*, § 1773 (1974 Supp.); Note, *Community Standards, Class Actions, and Obscenity Under* Miller v. California, 88 HARV. L. REV. 1838, 1868-69 n.130 (1975). In their motion in the District Court to confirm the class, the named plaintiffs sought certification under Rule 23(b)(1)(A) as well as under Rules 23(b)(1)(B), 23(b)(2), and 23(b)(3).

In any event, the failure of the Government to challenge on appeal the propriety of the class designation eliminates the need for us to resolve that issue. Rizzo v. Goode, 44 U.S. L.W. 4095, 4098 n.7 (U.S. Jan. 21, 1976).

appeal that the District Court erred in certifying this suit as a class action because it did not make its class action determination "as soon as practicable after the commencement" of the action as required by Rule 23(c)(1). The Government also presses the argument that due process required personal prejudgment notice to the easily identifiable members of this Rule 23(b)(1) class, and that the failure of the District Court to order such notice consequently requires reversal of the class action certification. Plaintiffs, who had asked the District Court to order the Government to disclose the names and addresses of members of the class, challenge on appeal the refusal of the District Court to honor that request.[37]

[37] We find it somewhat difficult to summarize the precise position taken by plaintiffs with respect to the disclosure issue. In their petition to the District Court for reconsideration of its decision, they state: "Although certified as a class under Rule 23(b)(1)(B), . . . the notice provisions of Rule 23(c) do apply as an element of due process in a given set of circumstances, Eisen v. Carlisle & Jacquelin, 391 F.2d 555 (CA 2, 1968) and that the circumstances herein demand notice to the class." App. at 269. They then state in their brief on apepal that "[t]his defect may be cured in this Court." Brief at 19. Taken together, these statements could be read to assert that the full *notice requirements* of Rule 23(c)(2) are applicable, including notice concerning the opportunity to "opt out", but that those requirements can be satisfied even after the District Court has entered its judgment. There is, of course, no opportunity to "opt out" of a 23(b)(1) action. On the other hand, the citations in their brief to Fed. R. Civ. P. 23(d) can be read to assert that the District Court had authority under Rule 23(d) to require the Navy Department to *disclose* the names of the members of the class and that the failure of the District Court to exercise

A. *The Requirements of Rule 23(c)(1)*

Rule 23(c)(1) provides:

> As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

The Government argues that the District Court's action certification must be reversed as inconsistent with Rule 23(c)(1) in that the District Court "did not make a class action determination until the entry of final judgment, some six months after the action commenced." Brief at 25-26.

Clearly, a District Court cannot simultaneously certify an action under Rule 23(b)(3) and enter a final judgment in the action since Rule 23(c)(2)[38]

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that authority was error. We will proceed to treat the argument as one directed at a Rule 23(d) order requiring *disclosure* rather than as one directed at the Rule 23(c)(2) *notice* requirements.

[38] Rule 23(c)(2) provides:

> In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specific date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

expressly requires *prejudgment* notice to the absent members of a Rule 23(b)(3) class concerning, among other things, their opportunity to "opt out" of the class.[39] *See Eisen* v. *Carlisle & Jacquelin*, 417 U.S. 156, 173-77 (1974). But this suit was certified as a class action pursuant to Rule 23(b)(1)(B), and there is nothing in Rule 23 itself requiring *prejudgment* notice to members of a Rule 23(b)(1)(B) class. Putting to one side the question of a due process requirement of prejudgment notice to absent members of a Rule 23(b)(1) class, we are left with the question of the precise scope of Rule 23(c)(1)'s procedural requirements.

In that regard, we find persuasive a recent analysis of the issue by Justice (then Judge) Stevens:

> The rule unquestionably allows the district judge to exercise his discretion in deciding upon the earliest "practicable" time to determine whether the case is to be processed as a class action; but the text certainly implies, even if it does not state expressly, that such a decision should be made in advance of the ruling on the merits. For the explicit permission to alter or amend a certification order before decision on

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[39] Roberts v. American Airlines, No. 74-1108 (7th Cir. Dec. 8, 1975), slip opinion at 10-11; Peritz v. Liberty Loan Corp., 523 F.2d 349, 354 (7th Cir. 1975) ("Section 23(c)(1) makes it plain in the second sentence thereof that the order determining class status is to be made and finalized 'before the decision on the merits.' ").

> the merits plainly implies disapproval of such alteration or amendment thereafter. On the other hand, that degree of flexibility permitted before the merits are decided also indicates that in some cases the final certification need not be made *until* the moment the merits are decided.

Jimenez v. *Weinberger*, No. 75-1046 (7th Cir. Sept. 12, 1975), slip opinion at 11 (emphasis in original).

Applying that analysis to the facts of this case, we do not think that the District Court committed reversible error in simultaneously certifying the case as a class action and entering summary judgment for the plaintiffs. In the first place, although the Government is correct in stating that the class action was not certified until "some six months after the action commenced," the final certification cannot be considered unreasonably delayed. Plaintiffs filed this suit on March 30, 1973 "on behalf of themselves and on behalf of all others similarly situated," and they filed a motion to confirm the class on April 23, 1973. The Government, after requesting two extensions of time, eventually filed its memorandum in opposition to the motion to confirm the class on June 27, 1973. After the named plaintiffs filed responsive papers in early August, the District Court heard oral argument on plaintiffs' various motions and directed the parties to complete the filing of additional papers by August 24, 1973. Although the District Court could have been more prompt in certifying the action, we do not consider the September 28, 1973 order untimely.[40]

Moreover, absent some showing of actual prejudice either to the Government or to the absent class members, we cannot conclude that the simultaneous entry of the judgment and the class action certification was reversible error. The only prejudicial factor which the Government suggests in this case is that simultaneous entry of the orders precludes the *prejudgment* notice to absent class members that is allegedly required under concepts of due process. It is to that issue that we now turn.

B. *Due Process Notice Requirements*

This case thrusts us directly into the controversy over the precise prejudgment notice requirements in

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[40] "[T]he time when a hard determination is 'practicable' as to the propriety of a class action will obviously vary from case to case. . . . [I]t may not be possible to decide even tentatively near the outset of the case whether it should continue as a class action." Frankel, *Some Preliminary Observations Concerning Civil Rule 23*, 43 F.R.D. 39, 41-42 (1967). *See, e.g.*, Philadelphia Elec. Co. v. Anaconda American Brass Co., 42 F.R.D. 324, 325 (E.D. Pa. 1967) (the class action question will remain open for at least two or three months given the fact that "[c]ounsel have requested leave to file affidavits, counter affidavits and briefs on this issue, and have indicated that they wish oral argument and possible additional discovery. . . ."). We think it was appropriate for the District Court to wait at least until the Government provided additional background information relevant to the issue of maintenance of the suit as a class action. *See, e.g.*, Baxter v. Savannah Sugar Ref. Corp., 46 F.R.D. 56, 59-60 (S.D. Ga. 1968).

Rule 23(b)(1) class actions."[41] The express language of Rule 23 requires prejudgment notice only to absent members of a Rule 23(b)(3) class, but a number of courts have concluded that "notice is required as a matter of due process in all representative actions, and 23(c)(2) merely requires a particularized form of notice in 23(b)(3) actions." *Eisen* v. *Carlisle & Jacquelin*, 391 F.2d 555, 564-65 (2d Cir. 1968), *on remand*, 52 F.R.D. 253 (S.D.N.Y. 1971), 54 F.R.D. 565 (S.D.N.Y. 1972), *rev'd.*, 479 F.2d 1005 (2d Cir. 1973), *vacated*, 417 U.S. 156 (1974). *Accord*, *Schrader* v. *Selective Service System Local Board No. 76*, 470 F.2d 73, 75 (7th Cir.), *cert. denied*, 409 U.S. 1085 (1972); *Zeilstra* v. *Tarr*, 466 F.2d 111, 113 (6th Cir. 1972) (dictum); *e.g.*, *Branham* v. *General Electric Company*, 63 F.R.D. 667, 669-71 (M.D. Tenn. 1974); *Richmond Black Police Officers Association* v. *Richmond*, 386 F. Supp. 151, 158 (E.D. Va. 1974). We note, however, that there is also considerable authority for the position that prejudgment notice to absent class members is not required in actions certified under sections of the Rule other than 23(b)(3). *Katz* v. *Carte Blanche*

[41] The existing literature and case discussion concerning this due process issue calls to mind a remark that Professor George Stigler made in the opening section of one of his major contributions to the theory of oligopoly: "No one has the right, and few the ability, to lure economists into reading another article on oligopoly theory without some advance indication of its alleged contribution." Stigler, *A Theory of Oligopoly*, 72 J. POL. ECON. 44 (1964). Fortunately, judges, unlike economists, have a captive audience.

Corp., 496 F.2d 747, 756 (3d Cir.) (Rules 23(b)(1) and 23(b)(2)), *cert. denied*, 419 U.S. 885 (1974); *Yaffe* v. *Powers*, 454 F.2d 1362, 1366 (1st Cir. 1972) (Rule 23(b)(2)); *Johnson* v. *Georgia Highway Express, Inc.*, 417 F.2d 1122, 1125 (5th Cir. 1969) (Rule 23(b)(2)) (by implication); *id.* at 1127 n.1 (Rule 23(b)(2)) (Godbold, J., concurring); *e.g.*, *Lynch* v. *Household Finance Corp.*, 360 F. Supp. 720, 722 n.3 D. Conn. 1973) (three-judge court) (Rule 23(b)(2)); *Woodward* v. *Rogers*, 344 F. Supp. 974, 980 n.10 (D.D.C. 1972), *aff'd without opinion*, 486 F.2d 1317 (D.C. Cir. 1973) (Rule 23(b)(2)); *Northern Natural Gas Company* v. *Grounds*, 292 F. Supp. 619, 636 (D. Kan. 1968) (Rules 23(b)(1) and 23(b)(2)); *Johnson* v. *Baton Rouge*, 50 F.R.D. 295, 299 (E.D. La. 1970) (Rule 23(b)(2)). *See also* 3B Moore's Federal Practice ¶ 23.55 (Rules 23(b)(1) and 23(b)(2)); 7A C. Wright & A. Miller, Federal Practice & Procedure: Civil § 1786 (Rules 23(b)(1) and 23(b)(2)). As the extent of the controversy among the various courts no doubt suggests, the due process issue is a difficult one. But our review of recent decisions in this and other federal courts indicates that the controversy has diminished considerably after the Supreme Court's decisions in *Eisen* v. *Carlisle & Jacquelin*, 417 U.S. 156 (1974) and *Sosna* v. *Iowa*, 419 U.S. 393 (1975).

The question before the Court in *Eisen* was whether Rule 23(c)(2), which requires in Rule 23(b)(3) actions "the best notice practicable under the circumstances, including individual notice to all mem-

bers who can be identified through reasonable effort," was satisfied by notice through publication rather than individual notice to the two and one quarter million easily identifiable members of a Rule 23(b)(3) class.[42] Noting that the language of the Rule is "unmistakeable", the Court held that individual notice is the "best practicable notice" with respect to those class members whose names and addresses are easily identifiable. At the same time, however, the Court emphasized that it was concerned "only with the notice requirements of subdivision (c)(2)," which is by its terms inapplicable to actions certified under 23(b)(1) or 23(b)(2).[43] 417 U.S. at 177 n.14.

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[42] The actual notification scheme consisted of four elements:

> (1) individual notice to all member firms of the Exchange and to commercial banks with large trust departments; (2) individual notice to the approximately 2,000 identifiable class members with 10 or more odd-lot transactions during the relevant period; (3) individual notice to an additional 5,000 class members selected at random; and (4) prominent publication notice in the Wall Street Journal and in other newspapers in New York and California. The [District Court] calculated that this package would cost approximately $21,720.

Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 167 (1974).

[43] The Advisory Committee's Note to Rule 23 makes it clear that the Advisory Committee thought that due process required prejudgment notice in Rule 23(b)(3) cases: "[M]andatory notice pursuant to subdivision (c)(2) . . . is designed to fulfill requirements of due process to which the class action procedure is of course subject." 39 F.R.D. 69, 106-107, *citing* Mullane v. Central Hanover Bank & Trust Company, 339 U.S. 306 (1950) and similar cases.

It is uncertain, however, whether the Supreme Court would conclude that due process requires *individual* prejudgment

Sosna decided just last Term, provides some firm indication that the Court intends to pursue a different approach to notice problems in actions certified under sections other than 23(b)(3). *Sosna* involved a class suit for declaratory and injunctive relief challenging the constitutionality of Iowa's durational residency requirement for divorce petitions. Recognizing that "it [was] contemplated that all members of the class will be bound by the ultimate ruling on the merits," 419 U.S. at 403, the Court first satisfied itself that the conditions of Rule 23(a) had been met. *Id.* As to the issue of notice in a Rule 23(b)(2) action, the Court stated in a footnote that "the

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notice. As Professor Dam has noted, "[a] close reading of Mr. Justice Powell's opinion [in *Eisen*] suggests that he did not want to base the notice holding on the Constitution. Yet his plain meaning methodology in interpreting the Rule apparently does not satisfy even him. He returns time and again to due process considerations to give plausibility to his literalist interpretation of the Rule." *Class Action Notice: Who Needs It?*, 1974 SUP. CT. REV. 97, 110. For Professor Dam's discussion of the structure of the opinion in terms of its reliance on the wording of Rule 23 and on due process considerations, see *id.* at 109-111.

It has been persuasively argued that *Mullane* and similar cases do not compel the conclusion that individual notice is required in all Rule 23(b)(3) class actions. *See, e.g.*, Note, *Managing the Large Class Action*: Eisen v. Carlisle & Jacquelin, 87 HARV. L. REV. 426, 433-441 (1973). But even were the Supreme Court to conclude that due process required individual notice in Rule 23(b)(3) actions, application of the *Mullane* balancing approach could lead to different results with respect to Rule 23(b)(1) and 23(b)(2) actions given the different interests at stake. Indeed, the subsequent textual discussion of *Sosna* suggests that very conclusion.

problems associated with a Rule 23(b)(3) class action, which were considered by this Court last Term [in *Eisen*], are not present in this case." *Id.* at 397 n.4.

Recognizing that the Court seems to have relied primarily on the language of the Rule rather than on constitutional grounds, a number of lower federal courts have concluded that *Eisen* and *Sosna* strongly imply that notice is not required in actions brought under subdivisions other than 23(b)(3). *United States* v. *Allegheny-Ludlum Industries, Inc.*, 517 F.2d 826, 878-79 (5th Cir. 1975) (Rules 23(b)(1) and 23(b)(2)); *Wetzel* v. *Liberty Mutual Insurance Co.*, 508 F.2d 239, 255-57 (3d Cir.) (Rules 23(b)(2)), *cert. denied*, 421 U.S. 1011 (1975); *Mattern* v. *Weinberger*, 519 F.2d 150, 157-58 (3d Cir. 1975) (Rule 23(b)(2)) (*citing Wetzel, supra*); *Molina* v. *Weinberger*, No. 74-1611 (9th Cir. Oct. 1, 1975), slip opinion at 11-14 (Rule 23(b)(2)); *e.g.*, *American Finance System, Inc.* v. *Harlow*, 65 F.R.D. 94, 110-11 (D. Md. 1974) (Rule 23(b)(2)). Indeed, the Second Circuit has now concluded that prejudgment notice is not required in 23(b)(2) actions, *Frost* v. *Weinberger*, 515 F.2d 57, 65 (2d Cir. 1975) (Friendly, J.), *see Ives* v. *W. T. Grant Company*, No. 74-462 (2d Cir. July 31, 1975), slip opinion at 5252, and the Seventh Circuit has indicated that its *Schrader* opinion will have to be reexamined in light of *Eisen*, *Bijeol* v. *Benson*, 513 F.2d 965, 968 n.3 (7th Cir. 1975).

Our own resolution of the due process claim in a Rule 23(b)(1) action must also take into account the recent decision by this court in *Childs* v. *United States Board of Parole*, 511 F.2d 1270 (D.C. Cir. 1974). The panel in that case, citing the Supreme Court's *Eisen* decision, upheld the District Court's grant of relief to members of a Rule 23(b)(2) class despite an argument by the Government that the absence of prejudgment notice in that case violated due process. *Id.* at 1276. We think that a similar resolution of the due process issue should obtain here; the factors that have prompted courts and commentators to conclude that due process does not require notice in Rule 23(b)(2) class actions are equally applicable to actions certified under Rule 23(b)(1).[“]

[“] In representative actions brought under [subdivisions other than Rule 23(b)(3)], the class generally will be more cohesive—for example, in many instances each member will be affected as a practical matter by a judgment obtained by another member if individual actions were instituted. Similarly, it is less likely that there will be special defenses or issues relating to individual members of a Rule 23(b)(1) or Rule 23(b)(2) class, than in the case of a Rule 23(b)(3) class. This means that there is less reason to be concerned about each member of the class having an opportunity to be present. Thus, in suits under subdivisions (b)(1) or (b)(2), once the court determines that the members are adequately represented as required by Rule 23(a)(4), it is reasonably certain that the named representatives will protect the absent members and give them the functional equivalent of a day in court.

In keeping with this philosophy, class members in Rule 23(b)(1) and Rule 23(b)(2) actions are not provided

Unlike the situation with respect to members of a Rule 23(b)(3) class, the members of a Rule 23(b)(1) class are likely to be more unified in the sense that there will probably be little interest on the part of individual members in controlling and directing their own separate litigation on the question at issue in the class suit. Indeed, in a Rule 23(b)(1)(B) class action, adjudications with respect to individual members would as a practical matter dispose of the interests of the absent members or substantially impair or impede their ability to protect their interests. At best, then, notice provides absent members, with an opportunity to monitor the representation of their rights. In such cases, we think that due process is satisfied if the procedure adopted "fairly insures the protection of the interests of absent parties who are to be bound by it." *Hansberry* v. *Lee*, 311 U.S. 32, 42 (1940). We agree with the Ninth Circuit's re-

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an opportunity by the rule to exclude themselves from the action as is true in Rule 23(b)(3) actions. Because they do not have the alternative of bringing a separate suit, notice really serves only to allow those members the opportunity to decide if they want to intervene or to monitor the representation of their rights. As a safety valve, the court is given discretion by Rule 23(d)(2) to direct notice to be given in any class action "for the protection of the members of the class or otherwise for the fair conduct of the action"—a power that is inherent in the court at least in situations having due process overtones.

7A C. Wright & A. Miller, *supra*, § 1786 at 143-44 (footnotes omitted. *See Molina* v. *Weinberger*, No. 74-1611 (9th Cir. Oct. 1, 1975), slip opinion at 12-13.

cent observation that "[o]nly when the purposes in providing class members an opportunity to signify whether representation by named plaintiffs is fair and adequate or to intervene to present additional claims or to otherwise come into the action to, for example, submit views as amici curiae, are in need of being served, does due process require the direction of some sort of notice to absent members" of a Rule 23(b)(1) class. *Molina* v. *Weinberger*, *supra*, slip opinion at 13 (Rule 23(b)(2)). In such cases, notice can be provided pursuant to Rule 23(d)(2)." Since in our view this case does not present special circumstances requiring prejudgment notice, we uphold the District Court's order certifying the class.

C. Disclosure Under Rule 23(d)

Plaintiffs argue that the District Court erred in refusing to grant their request for an order directing the Government to disclose the names and addresses of the members of the plaintiff class. Having considered the context in which this request was made,

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[45] Rule 23(d)(2) provides:

In the conduct of actions to which this rule applies, the court may make appropriate orders: (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action.

we cannot conclude that the District Court abused its discretion in refusing to issue a Rule 23(d) order.

On May 8, 1973, the attorneys for the named plaintiffs wrote to the United States Attorney's Office stating that "it would be helpful for the Court and plaintiffs if the U.S. Navy were to prepare a list of the names and locations of the plaintiffs [sic] class so that we would be in a position upon Court ruling to notify those members of the class." The United States Attorney did not respond favorably to the request. Plaintiffs apparently first mentioned the disclosure issue to the District Court in their opposition to the Government's initial motion for an extension of time in which to respond to the motion to confirm the class. In their written opposition, plaintiffs mentioned their correspondence with the Government, but failed to request a Rule 23(d) order.

As noted earlier, the Government filed a second motion for an extension of time in which to respond to plaintiffs' motion to confirm the class, and it was in their written opposition to that motion that plaintiffs formally requested an order requiring the Government to disclose the names and addresses of the class members. No reasons were offered to support that request; plaintiffs simply asked for a disclosure order "in addition" to a requested order fining the Government $500 per day per plaintiff for its continued delay in filing responsive papers.

The judgment entered by the District Court complied in all respects with Rule 23(c) in that it described the members of the plaintiff class. Absent

some articulation of the reasons why plaintiffs thought a disclosure order would be necessary to protect the interests of absent class members, the District Court certainly cannot be said to have abused its discretion in denying the requested order.

IV. Attorneys' Fees

Plaintiffs' counsel asked the District Court to award them attorneys' fees in the amount of $175,000, approximately 25% of their estimate of the total class recovery. The District Court chose not to follow a percentage of recovery approach and instead relied on the standards for computing attorneys' fees that it had fashioned in *Kiser* v. *Miller*, 364 F. Supp. 1311 (D.D.C. 1973). Application of the District Court's *Kiser* approach to this case produced an award of $14,729. Shortly after appellate briefs in this case were filed, this court approved the approach which the District Court had taken in *Kiser*. *Kiser* v. *Huge*, No. 73-1393 (D.C. Cir. August 5, 1974), slip opinion at 29-37, 517 F.2d at 1289-93.[46] Recognizing here, as we did in *Kiser*, that "we must pay considerable deference to the District Court's exercise of equitable discretion in setting [attorneys'] fees," slip opinion at 29, 517 F.2d at 1289, we cannot say that the District Court's evaluation of the relevant fac-

[46] This court granted rehearing en banc on October 2, 1974, but eventually reinstated that portion of the panel opinion dealing with the attorneys' fees issue. Pete v. UMWA Welfare & Retirement Fund, 517 F.2d 1275, 1279, 1289-93 (D.C. Cir. 1975).

tors produced an unreasonable, albeit quite modest, award.

The District Court properly withheld calculation of that portion of the attorneys' fees award dealing with the efforts of counsel directed at this appeal, *see Kiser, supra*, slip opinion at 35-36, 517 F.2d at 1292, and we therefore remand the case to the District Court for a determination with respect to that question.

It is so ordered.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1975

Civil Action 626-73

[Filed Apr. 21, 1976, United States Court of Appeals for the District of Columbia Circuit, George A. Fisher, Clerk]

No. 74-1211

NICHOLAS J. LARIONOFF, JR., ET AL.

v.

THE UNITED STATES OF AMERICA, ET AL., APPELLANTS

No. 74-1212

NICHOLAS J. LARIONOFF, JR., ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA, ET AL.

Before: Bazelon, Chief Judge; Wright, McGowan, Tamm, Leventhal, Robinson, MacKinnon, Robb and Wilkey, Circuit Judges.

ORDER

The suggestion for rehearing *en banc* filed herein by defendants-appellants and cross-appellees, United States of America, et al., having been transmitted to the full Court and no Judge having requested a vote thereon, it is

ORDERED by the Court *en banc* that the aforesaid suggestion for rehearirg *en banc* be, and it hereby is, denied.

Per Curiam

For the Court:

/s/ George A. Fisher
GEORGE A. FISHER
Clerk

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1975

Civil Action 626-73

[Filed Apr. 29, 1976, United States Court of Appeals for the District of Columbia Circuit, George A. Fisher, Clerk]

No. 74-1211

NICHOLAS J. LARIONOFF, JR., ET AL.

v.

THE UNITED STATES OF AMERICA, ET AL.,
APPELLANTS

No. 74-1212

NICHOLAS J. LARIONOFF, JR., ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA, ET AL.

Before: Richard T. Rives,* Senior Circuit Judge for the Fifth Circuit; Wright and McGowan, Circuit Judges.

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* Sitting by designation pursuant to Title 28 U.S. Code Section 294(d).

ORDER

Upon consideration of the defendants-appellants-cross appellees' petition for rehearing, it is

ORDERED by the Court that the aforesaid petition for rehearing is denied.

Per Curiam

For the Court:

/s/ George A. Fisher
GEORGE A. FISHER
Clerk

Statement of Circuit Judge McGowan, joined in by Senior Circuit Judge Rives and Circuit Judge Wright, as to why they voted to deny rehearing.

The Government has filed a petition for rehearing and a suggestion for rehearing *en banc* on the grounds that: (1) the panel opinion "conflict[s] with prior decisions of this Court and with decisions of the Supreme Court holding that public benefits such as the variable reenlistment bonus can never be the subject of 'contract rights' and in the discretion of Congress may be reduced or terminated at any time before they are received"; and (2) the panel opinion "has unduly restricted the paramount powers of Congress, has disregarded a clear declararation of congressional purpose, and has significantly restricted the scope of an important constitutional grant of power" in ruling that Congress was not free to abrogate existing contract rights to the VRB. Because

we are of the view that neither statement accurately reflects the scope of the panel decision, we deny the petition for rehearing.

Before discussing the three primary contentions pressed upon us by the Government, we note that the petition for rehearing focuses only on named plaintiff Johnson and other members of the class who began serving their periods of extended service after the *effective* date of the 1974 statute repealing the Variable Reenlistment Bonus system.[1] Admittedly, the Government does seek a reexamination of the other issues to insure a consistent result among all plaintiffs, but the primary emphasis in the petition is on the disposition of the case given the 1974 repeal of the statute, which is discussed at Part II. C. of the panel opinion.

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[1] We think it appropriate to note why the panel "decided to rule on the effect of the new Act on plaintiff Johnson, even though it acknowledged that the matter had not been raised (and had not been briefed or argued)." Petition at 6. The panel reached the issue precisely because it had no other choice; one of the named plaintiffs had entered into his period of extension *after* the repeal of the statute authorizing the VRB system, and consequently the panel had to satisfy itself that the affirmance of the District Court's grant of relief as to Johnson and others similarly situated was not barred by the subsequent statutory change. The panel purposefully noted in the opinion that the issue had not been raised to highlight the fact that at no time in the course of this appeal did the parties notify the court of the repeal of the authorizing statute.

I

The Government first argues that named plaintiff Johnson had no contract right to a VRB award since "the very nature of the statute . . . which authorized the VRB was such as to prevent the VRB from ever becoming the subject of a 'contractual entitlement' ".[2] Petition at 11. The Government takes the position that the VRB is a "gratuity" which may be altered or repudiated at any time. Our problem with this approach is that it fails to address the narrow issue in the case; the question is not whether a VRB can under some circumstances be considered a gratuity, but whether it ripened to a contract right under the circumstances presented in this record. To be sure, in some contexts, reenlistment bonus awards are "gratuities"; the panel does not, and indeed would not, take the position that once having established a VRB award system the Congress cannot terminate it. As to those enlisted personnel who were planning to reenlist but who took no binding action in that re-

[2] We find somewhat disconcerting the Government's statement that the panel opinion "does not identify the source" of the contractual entitlement to a VRB, and that as a result the Government has had to assume that the contractual entitlement finding is based on the language in the extension agreements promising the named plaintiffs such "pay" as would accrue to them during their periods of extended service. Petition at 7. As footnote 23 of the panel opinion expressly notes, the Government conceded in its brief that the term "pay" in the extension agreements includes VRB awards, and we reject any new suggestion to the contrary in the petition for rehearing.

gard prior to the effective date of the repeal, the VRB is a "gratuity" rather than a contract right. This point is illustrated by *United States* v. *Dickerson*, 310 U.S. 554 (1940), which concerned congressional action on June 21 of 1938 suspending for the fiscal year July 1, 1938 to June 30, 1939 a statutorily authorized reenlistment bonus. Dickerson was discharged on July 21, 1938 and reenlisted the very next day. His expectation that he would receive a bonus upon reenlistment did not confer a contractual right to those benefits, and the Court held that he was covered by the congressional action on June 21 prospectively suspending the reenlistment bonus.[3]

[3] To the same effect are Richardson v. Belcher, 404 U.S. 78 (1971) and Flemming v. Nestor, 363 U.S. 603 (1960), two cases with which the panel opinion allegedly conflicts. In *Belcher*, the plaintiff was receiving social security disability benefits of approximately $330 per month when Congress amended the Social Security law to require a reduction in benefits to reflect receipt of state workmen's compensation benefits. As a result of the amendment, the plaintiff's disability benefits were reduced to approximately $225 per month. The Court expressly noted that "an expectation of benefits [does not] confer a contractual right to receive the expected amounts." 404 U.S. at 80. In *Flemming*, the plaintiff's old age benefits were terminated, as required by statute, when he was deported. The Court there noted: "[E]ach worker's benefits, though flowing from the contributions he made to the national economy while actively employed, are not dependent on the degree to which he was called upon to support the system by taxation. *It is apparent that the noncontractual interest of an employee covered by the Act cannot be soundly analogized to that of the holder of an annuity, whose right to benefits is bottomed on his contractual premium payment.*" 363 U.S. at 609-10 (emphasis added). Named plaintiff Johnson's right to the

But we do not read *Dickerson* to mean that one can never claim a contract right to a benefit which in some contexts has been accurately labeled a gratuity. That just the opposite is true is illustrated by the Supreme Court cases cited by the Government dealing with changes in the salaries of Government officials. For example, in *Fisk* v. *Jefferson Police Jury* the Supreme Court noted:

> [T]hough when appointed the law has provided a fixed compensation for his services, there is no contract which forbids the legislature or other proper authority to change the rate of compensation for salary or services after the change is made, though this may include a part of the term of the office then unexpired. Butler v. Pennsylvania, 10 How. 402.
>
> But after the services have been rendered, under a law, resolution, or ordinance which fixes the rate of compensation, there arises an implied contract to pay for the services at that rate. This contract is a completed contract.

116 U.S. 131, 133-34 (1885).

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benefit of a VRB is bottomed on his contractual obligation to serve his country for an additional two years, and the VRB award depended directly on his willingness to sign an agreement to extend his service.

The other "gratuity" cases relied on by the Government resemble *Belcher* and *Flemming*, rather than the case of the holder of an annuity. *See, e.g.*, Thompson v. Gleason, 317 F.2d 901 (D.C. Cir. 1962) (disability benefits); Barnett v. Hines, 105 F.2d 96 (D.C. Cir.), *cert. denied*, 308 U.S. 573 (1939) (retirement pay).

The salary cases indicate that once someone agrees to perform certain services in exchange for a given sum of money, and the Government has received that performance—or, as in this case, insists on receiving it[4]—the case is different; the "gratuity" becomes a contractual right.[5]

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[4] Plaintiff Johnson's situation differs in one important respect from that of the Government officials in the salary cases: he is not free to leave his job. *Compare* Embry v. United States, 100 U.S. 680, 685 (1879) ("If an officer is not satisfied with what the law gives him for his services, he may resign."). Consequently, the crucial factor concerning contractual entitlement is not whether named plaintiff Johnson has fully served his two year extension, but whether he is required to do so.

[5] In this regard, the Government's citation of Hochman, *The Supreme Court and the Constitutionality of Retroactive Legislation*, 73 HARV. L. REV. 692 (1960) is slightly misleading. The Government quotes Hochman's statement that gratuities "may be altered or repudiated at any time until the benefits conferred by them are actually received." *Id.* at 724. But Hochman goes on to note that the "key element" with respect to whether a benefit is a gratuity appears to be "the absence of any financial cost in the acquisition of the right based upon the original statute." *Id.* at 725. Hochman argues that:

> It should be stressed that the reliance required to remove a right from the category of gratuity . . . is a financial detriment in the acquisition of the right, and not merely reliance on the right after it accrues, as, for example, the making of a financial commitment in reliance upon the statute. The reason for this stricter requirement is probably similar to that encountered in the cases sustaining the extension of statutes of limitation; the . . . gratuity is given by a statute for public purposes which are not controlled by the merits of the donee's claim to the right. Under these circumstances, the Court is reluc-

Thus, our conclusion with respect to the "gratuity" versus "contract right" issue is that mere labels are neither helpful nor determinative. The issue is not whether a given claim to money resembles a "gratuity" in benevolent purpose, but whether the claim *sub judice* differs from a gratuity fundamentally in legal incidents. *See Lynch* v. *United States*, 292 U.S. 571, 576-77 (1934). Here, unlike the social security and other gratuity cases relied on by the Government, there is an agreement between the parties and the plaintiffs have undertaken a serious commitment in order to acquire the right to a VRB, namely, the promise to spend an additional two years in military service. The Government now seeks to enforce the promise to serve and at the same time label the promise it offered in return a mere gratuity. The cases relied on by the Government do no justify that result.[6]

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tant to permit the donee to obstruct a reassessment of these purposes by the legislature.

Id. at 726 (footnote omitted). We would find it difficult to conclude that there was no financial cost in the acquisition of the right to a VRB or that the right to a VRB is not controlled by the merits of the enlisted person's claim—namely, willingness to extend his period of service.

[6] The Government did not press this gratuity argument in its initial brief. The reason for that may be that as to the other named plaintiffs who began serving their extensions prior to the effective date of the repeal, the termination of the alleged "gratuity" was achieved by military regulation rather than by statute. *See* Carini v. United States, 528 F.2d 738, 741 n.7 (4th Cir. 1975). But if the Government is of the view that only Congress could terminate the "gratuity," we fail

II

The Government raises a second but equally unpersuasive argument as to why named plaintiff Johnson did not have a contract right to a VBR award, that enlisted documents must be construed to incorporate not only the statutes in force at the time the agreement is signed but future changes in those statutes as well. Petition at 8. The Government's point on this issue is certainly accurate as to regular pay for enlistees, and cases such as *Johnson* v. *Powell*, 414 F.2d 1060 (5th Cir. 1969), indicate that the Government's point has broad applicability. But this does not mean that Congress is without authority to decide to promise a specific sum, rather than an uncertain sum, to achieve a given result, and this is precisely how the panel interpreted the extension agreement. Our review of the legislative history—which is clear—and the regulations—which at times are ambiguous—led us to conclude that Congress intended—and the regulations provided—a promise to pay a specific sum (in the form of a VRB) not dependent on future change.

As we read the petition, the Government does not argue that Congress is without power to establish a VRB scheme not dependent on future change. Instead, it argues that the contract for a VRB is like the normal contract for military pay—that is, a

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to see how a reexamination of the issues with respect to the named plaintiffs other than Johnson would produce a consistent result. *See* Petition at 15.

contract which anticipates future changes. But that is simply to say that the Government disagrees with the panel's interpretation of the contract; the argument was considered and rejected by the panel, and mere disagreement with the result does not warrant rehearing.

We stress that this is the only point on which we are in conflict with the Fourth Circuit. In *Carini* v. *United States*, 528 F.2d 738 (1975), that court took the position that the contract at issue anticipated possible statutory change, a result reached without analysis of the legislative history or applicable regulations. Moreover, as we indicated at footnote 35 in the panel opinion, all four district courts ruling on the issue disagree with the approach taken by the Fourth Circuit.[7]

III

The final argument raised by the Government is that even if named plaintiff Johnson had a contractual right to a VRB award, Congress was exercising a paramount power in repealing the statue and thus under *Lynch* v. *United States*, 292 U.S. 571 (1934), was constitutionally free to abrogate existing con-

[7] The Fourth Circuit itself was not pleased with the result it felt obliged to reach: "While we hold that there is no enforceable contract right to the payment of the VRBs under the now repealed § 308(g), the situation of these plaintiffs is most appealing. . . . Under the circumstances, the Congress may wish to reconsider their situation and the moral claims they have against the United States." 528 F.2d at 741-42.

tract rights.[8] The Government agrees with the panel's view that there was a fiscal purpose behind the Act, but maintains that "the Act represents a legitimate exercise of Congress' paramount power to 'raise and support armies' and 'to make rules for the government and regulation of the land and naval forces.'" Petition at 15. This is so because "the purpose of the Act was to provide the Defense Department with the recruitment tools it needed to fill critical skill needs in the new All-Volunteer Force." *Id.* at 14. The Government's analysis of the legislative history indicates that the military departments found two deficiencies in the then effective bonus scheme: the authorization of a regular, as opposed to variable, reenlistment bonus without regard to specialty; and the failure to provide a VRB for reenlistments subsequent to the first reenlistment.

We have no disagreement with the Government's assessment of these purposes, but the determinative factor is that they have nothing to do with enlisted personnel who had already agreed to extend their

[8] The Government maintains that it is not clear that *Lynch* sets the correct standard, but nevertheless appears to be willing to concede for purposes of this appeal that the *Lynch* standard applies. Petition at 13 & n.9. Whether *Lynch* requires the exercise of a paramount power or something less—whatever that may be—it is clear that abrogation of contract rights for the sole purpose of reducing expenditures is not constitutionally sanctioned. Since in our view that is the only justification for *retroactive* termination as to named plaintiff Johnson, we need not rehear the case to consider the issue of the outer limits of the *Lynch* doctrine.

enlistments before Congress repealed the prior statute. The purposes identified by the Government speak in prospective terms and are completely unrelated to men who had already agreed to serve the additional two years; as a result, they cannot be used to justify a change in the terms of already binding extension agreements.

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 626-73

[Filed Sep. 28, 1973, James F. Davey, Clerk]

NICHOLAS J. LARINOFF, JR., ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, ET AL., DEFENDANTS

APPEARANCES:

Stephen Daniel Keeffe, Esq.,
Washington, D.C.
John A. Keeffe, Esq.
New York, Of Counsel
For the Plaintiffs.

Harold H. Titus, Jr., Esq.
Arnold T. Aikens, Esq.
Michael A. Katz, Esq.
For the Defendants.

MEMORANDUM OPINION OF
JUDGE CHARLES R. RICHEY
UNITED STATES DISTRICT JUDGE

I. INTRODUCTION

This case is before the Court on Cross Motions for Summary Judgment. The Plaintiffs are petty officers in the United States Navy wherein the Plaintiffs

claim entitlement to a reenlistment bonus. They are classified as Communications Technicians-Maintenance (CTM), a service rating which at the time they enlisted was classified as a "critical military skill," and, thus eligible for a Variable Reenlistment Bonus (VRB) payable in two equal installments in each year of the first term reenlistment. The Bonus was four times the regular reenlistment bonus. On July 1, 1972, the Navy reclassified the CTM rating as non-critical and thus allegedly made the Plaintiffs no longer eligible for the VRB. This was prior to the time the Plaintiffs' reenlistment period began to run, but after the time they signed their reenlistment contracts. As indicated, the Navy now refuses to pay the Plaintiffs the VRB. This is a class action where the Plaintiffs are suing for themselves and all those similarly situated for payment of a VRB. They invoke the Court's jurisdiction under the Tucker Act, 28 U.S.C. § 1346(a), claiming that the language in their enlistment contracts entitles them to relief.

II. BACKGROUND OF THE CASE

Each of the seven named Plaintiffs enlisted for four years in the navy at seven different times and places.[1] All were assigned to the Advanced Electronic Field training program. Successful comple-

[1] Boudreau enlisted on 1/13/69 at Boston, Mass.; Dietz on 9/3/69 at Fargo, N.D.; Johnson on 8/28/70 at Los Angeles, Calif.; Larinoff on 6/23/69 at Newark, N.J.; Smith on 10/1/68 at Detroit, Mich.; Tomiano on 3/28/69 at Pittsburgh, Pa.; White on 3/13/69 at Denver, Colo.

tion of this approximately year-long course earned the Plaintiffs rapid promotions and a rating as CTM's, a critical military skill. Assignment to the Advanced Electronic Field program, however, required the Plaintiffs to obligate themselves for six years of Naval service. Each Plaintiff, therefore, had to sign a two-year extension contract on the day he originally enlisted or shortly thereafter.[2]

Between April 20, 1966 and July 1, 1972, "CTM" was classified as a "critical military skill." Pursuant to 37 U.S.C. § 308(g) the holder of a "critical military skill" classification who voluntarily extended his first term enlistment for two years was entitled to a reenlistment bonus not more than four times the amount of the regular reenlistment bonus computed under subsection (a) of § 308.[3] *See, Department of the Navy, Bureau of Naval Personnel Instruction (BUPERSINST)* 1133.18B "Variable Reenlistment Bonus (VRB Program," Dec. 19, 1968. In March of 1972, the Department of the Navy determined that CTM's category did not need special emphasis for recruitment, and removed the rating from the critical skills list, and, as a result, they argue that Plaintiffs are not eligible for the VRB.

[2] Boudreau, Dietz, Johnson and Tomiano signed their extension contracts the same day on which they executed the original four-year commitment. Larinoff signed his contract on July 9, 1969; Smith on October 15, 1968 and White on July 23, 1969.

[3] The bonus was to be paid in equal yearly installments in each year of the reenlistment. 37 U.S.C. § 308(g).

The Plaintiffs maintain that the prospect of eligibility for a VRB as a CTM induced them to sign for the extra two years. Upon examination of the legislative history of the VRB, it appears that Congress intended that the VRB should assist in the attraction and retention of members of the armed forces with critical skills. The VRB was to do this by providing an especially strong reenlistment incentive to first term enlisted personnel in the critical skill areas. *1965 U.S. Code Cong. and Adm. News*, at 2749, 2756-7.

Now that the CTM is not classified as a critical skill, the Navy refuses to pay the Plaintiffs their VRB when their reenlistment periods become effective. The government maintains that (1) the Plaintiffs do not state a claim upon which relief can be granted; and (2) that Court lacks subject matter jurisdiction; and (3) the Plaintiffs have not exhausted their administrative remedies; and (4) the Defendants are not obligated to pay an additional bonus under the terms of the enlistment contracts. The plaintiffs argue that the VRB, statutorily defined as "pay" and paid to all CTMs when the Plaintiffs signed their contracts, is payable to them under their contract terms. The parties agree there is not dispute as to a material issue of fact.

The Court is of the opinion that the Plaintiffs must prevail on all issues raised in this case, with the exception of the award of attorney's fees, for the reasons set out below.

III. THIS SUIT IS A PROPER CLASS ACTION UNDER RULE 23(b)(1)(B) OF THE FEDERAL RULES OF CIVIL PROCEDURE

The proposed class in this suit is composed of all enlisted U.S. Naval Personnel who signed their first reenlistment contracts for two additional years of duty prior to July 1, 1972, and who would have been entitled to a VRB due to their critical skill rating had the period of reenlistment begun to run prior to July 1, 1972. The Plaintiffs estimate the class size to lie between 200 and 400. While they have not supplied any documentation to support this, the Defendants have neither denied this number nor have they supplied a class list.

This case clearly meets the requirements of Rule 23(b)(1)(B) to be certified as a class action. The members of the proposed class are so numerous and geographically dispersed that joinder of all members would be impractical. The sole issue on the merits before the Court requires an interpretation of the contract which the Department of the Navy uses to secure all its reenlistment obligations. This is a matter of law applicable to all parties who are bound by these uniform contracts. Therefore, an adjudication with respect to the individual members of the class would as a practical matter be dispositive of the interests of the other members of the class as defined above.

IV. THE COURT HAS SUBJECT-MATTER JURISDICTION UNDER THE TUCKER ACT

The Tucker Act gives District Courts original jurisdiction, concurrent with the Court of Claims over any claim against the United States not exceeding $10,000 in amount, founded upon any express or implied contract with the United States. 28 U.S.C. § 1346(a)(2). In 1964, Congress amended § 1346 (d)(2), which prohibited district courts from exercising jurisdiction over claims or civil actions to recover fees, salary, or compensation for official services of officers or employees of the United States. This specific action by Congress indicates that district courts can now hear and determine the issues raised in the case at bar.

This suit is for the reenlistment bonus, which Plaintiffs maintain is included in the consideration delineated in their contracts. The pertinent terms of the contract relating to consideration state: ". . . in consideration of the pay, allowances, and benefits which will accrue to me during the continuance of my service, . . .".[4] The term the Plaintiffs em-

[4] The language of the Defendants' printed form "Agreement to extend Enlistment" (NAVPERS FORM 601-1A) says in pertinent part: I (name of enlistee, service number) having enlisted in the Navy of the United States on (date) for (no.) of years, *in consideration of the pay, allowances and benefits* which will accrue to as during the continuance of my service, voluntarily agree to extend my enlistment, as authorized by section 5539 of Title 10, United States Code, and the regulations issued pursuant thereto. . . ." (*emphasis added*).

phasize is "pay." Section 308 of Title 37 of the United States Code terms the reenlistment bonus (including VBR's) as "special pay." The definitional section of Title 37 of the United States Code, Section 101(21) defines "pay" as including special pay. Therefore, the Court determines that the Plaintiffs have made a prima facie case that the suit before the Court is founded upon a contract for compensation between the United States and its employees.

V. THE PLAINTIFFS HAVE EXHAUSTED THEIR ADMINISTRATIVE REMEDIES

The Plaintiffs presented their claims to the Bureau of Naval Personnel and members of Congress. The Defendants maintain this was insufficient to exhaust the Plaintiffs' administrative remedies; the Plaintiffs should have applied to the Board for Correction of Naval Records (BCNR) for relief.

As the Defendants have stated, the purpose of the BCNR is to determine the existence of error or injustice in Naval records and to make recommendations for the correction of those records, if warranted, to the Secretary of the Navy. 10 U.S.C. § 1552. An examination of the language of the law and its legislative history indicates that the act is intended to provide correction of an individual's service record which has entries resulting from the actions of general courts martial and of statutory bodies, such as Boards of Review, and to provide

reimbursement of any compensation which the individual has been denied due to an incorrect or unjust entry. *40 Ops. Att'y Gen. 504 (1947)*. As the Attorney General's opinion emphasizes, the purpose of the act was to relieve Congress of the private bills necessary to effect a correction of such entries. *Id.* at 508.

Back pay due because of an incorrect or unjust discharge or naval record entry is not the relief sought here. Plaintiffs here seek an enforcement of the provisions of their enlistment contracts which were binding upon the Plaintiffs and the government at the time of execution. The Plaintiffs' contracts provided that they could not be cancelled except as set forth in the *Bureau of Personnel Manual (BUPERSMAN), Article C-1407*. The Plaintiffs presented their complaints to the Bureau of Naval Personnel, the body which set the policy for cancellation of enlistment contracts. Through that body, the defendant has given its interpretation of the contract, and denied the cancellation request after reviewing the facts. The matter is appropriately before this Court, whether one views it as a review of an administration's determination of a question of law or in light of 28 U.S.C. § 1346 which gives this Court original jurisdiction over contract questions.

VI. THE PLAINTIFFS ARE ENTITLED TO A VRB WHICH WAS PAYABLE WHEN THEY SIGNED THEIR CONTRACTS FOR THE TWO-YEAR EXTENSION

Turning to the contracts involved in this suit, the Defendants argue that the two contracts should be viewed as one—a six-year obligation in exchange for specialized training only. The Court does not see the contracts as one entity, however. They are two separate documents in form and substance. The first is for the regular four-year enlistment which any person desiring to enlist signs as a matter of course. This contract makes no promises. The second, the reenlistment contract, does make a promise—in exchange for two additional years' obligation, the Navy would provide special schooling leading to a critical military skill rating.

There is no argument that the Plaintiffs have received the benefits of training because they signed reenlistment contracts long before their original enlistment contracts expired. The question is, however, whether these reenlistment contracts also provide for a VRB, in addition to the training, in exchange for the six-year obligation.

As the Court stated, *supra*, in Section IV of this Opinion, the statutory definition of the term "pay" as it applies to the military does include the variable reenlistment bonus. See 37 U.S.C. § 101(21) and § 308. The VRB was intended to induce first term reenlistment among those with such classified skills to insure the Navy maintained an adequate number

of personnel in these areas. At the time the Plaintiffs signed their reenlistment contracts, the Navy was paying the VRB for this purpose. The Navy was thus benefiting from a guaranteed supply of personnel in critical areas. The Plaintiffs committed themselves to a total of six years in one of these critical skills which was receiving the VRB. If the Plaintiffs were bound to the reenlistment contract from the moment of its execution, then mutuality of agreement requires that the Defendants be likewise bound.

The cardinal rule of contract law that comes into play when analyzing the language of a written instrument is that the document must be considered in light of the situation and relationship of the parties, the circumstances surrounding them *at the time of the contract*, and the nature of the subject-matter and the apparent purpose of the contract. E.g., *Fox* v. *Johnson & Wimsatt, Inc.*, 75 U.S. App. D.C. 211, 127 F.2d 729 (1942); *Aronsen* v. *K. Arakelian, Inc.*, 154 F.2d 231 (7th Cir. 1946).

Applying this rule to the facts of this case there can be no dispute that the Navy was using the VRB at the time the Plaintiffs signed their extension, to induce reenlistment in critical skill areas. The Plaintiffs committed themselves to six-year obligations in critical skill areas "in consideration for pay . . ." that the Defendants were paying all other critical skill first term enlistees. The Defendants cannot suspend the VRB's in a retroactive fashion, not after the Defendants have obtained their full bargained-

for exchange under the contract, i.e., an obligated work force. Their suspension of the VRB payment can apply only to those first term reenlistments which were signed after July 1, 1972.

If the Defendants did not want to be committed to the payment of the VRB, they should have made a self-evident provision in the contract. The printed form contract, after all, was drafted solely by the Defendants; its language was entirely within their control.[6] In addition, it is elemental that a contract must be construed most strongly against the authors which in this case was the government. E.g., *Alcoa S.S. Co.* v. *U.S.*, 338 U.S. 421 (1950); *John W. Johnson, Inc.* v. *Basic Construction Co.*, 139 U.S. App. D.C. 85, 429 F.2d 764 (1970).

Therefore, the Court holds that the Plaintiffs are entitled to recover the variable reenlistment bonus applicable to their critical skill rating which was in effect at the time they signed their reenlistment contract.

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[6] A self-evident provision that the Defendants included in the original enlistment contract was a certification that no promise was made as to duty assignment, geographical area, schooling, special programs, assignment of government quarters or transportation of dependents. This provision appears to be superceded by the reenlistment contract's promise of special training (schooling, special programs) in the Advanced Electronic Field training program.

VII. THE AWARD OF ATTORNEY'S FEES MUST BE DETERMINED BY *KISER* CLASS ACTION STANDARD

Plaintiffs' counsel requests $175,000.00 as an appropriate award of attorney's fees. Counsel derived the figure of their proposed award both by a fee of $200 per hour or 25% of the estimated class recovery. Counsel have received a retainer of $2,700.00 from the representative Plaintiffs and have a contract for legal fees designating charges of $125 to $200 per hour for partners and counsel and $40 to $60 per hour for law clerks.

Counsel have submitted time records and a disbursement sheet. Counsel's affidavit filed August 29, 1973 indicates 378½ hours of partner time and 221 hours of clerk time has been expended on this case. This sum is the total for both the New York and Washington offices.

Since this case was filed on March 30, 1973, Plaintiffs' counsel have appeared in court twice: the first appearance was on a motion for a temporary restraining order, to prevent the transfer of the Plaintiffs from their duty stations in the Washington area pending a determination of the case, and second, on a hearing on the cross motions for summary judgment. At the second court appearance, counsel was granted leave to file an amended complaint to prevent the case from being dismissed on a technicality—lack of subject matter jurisdiction. Upon filing their amended complaint, counsel submitted a memorandum on

the question of attorney's fees as the Court had requested.

As this is a class action, the Court finds the appropriate standard for the determination of attorney's fees is the standard and policy considerations set out by this Court in the case of *Kiser* v. *Miller*, et al, C.A. 2599-70 and C.A. 2088-71, filed August 29, 1973. Applying that standard to the facts of this case, the Court has determined that an award of $14,729.00 is appropriate in this case.

In making this determination, the Court finds that $40 an hour is an appropriate reflection of the effort and skill expended in this case as well as the result achieved. The Court also finds that an hourly rate of $6.00 per hour is an appropriate fee for law clerks, considering the prevailing wage for their services.

Upon examination of the time records, the Court noted that a majority of the New York counsel's time was spent solely in telephone conferences with Washington counsel and that consisted of over 60 hours of the partner's recorded 82 hours. It also appears that there was a great amount of duplication of law clerk research effort between the two offices. Therefore, the Court has reduced the number of hours expended by the New York partner to 22 hours and has reduced the amount of clerk time recorded in each office by one-half, producing a total of 110 hours of clerk time. The total number of partners' time used to compute the fee was 318¼ hours. The total hourly fee then is $13,390.00—$12,730.00 for partner's time and $660.00 for clerk's time. In

addition, the Court has added a 10% premium as an incentive fee, bringing the total award to $14,729.00. This award does not include the $2,700.00 retainer fee which will be dealt with *infra*.

The payment of attorney's fees will be made from the class recovery. Each class member's individual recovery will be taxed for his pro-rata share of the attorney's fee. In addition, counsel must refund the $2,700.00 in retainer fees to the representative plaintiffs, since counsel has received a Court award of attorneys' fees.

Section 2412 of Title 28 of the United States Code does not permit the Court to enter a judgment for costs against the United States government unless it is expressly authorized to do so by statute. Section 2412 expressly excludes the taxing of attorney's fees and expenses. *See* 6 Moore, *Federal Practice*, ¶ 54.75 [3.-2] at 1558 (1972). H.R. Rep. No. 1535, *1966 U.S. Code Cong. and Admin. News* 2527, 2531. Therefore, although equity would require taxing of attorney's fees to the defendants in this case, the statute precludes this Court from so doing.

As to the matter of costs and expenses, the Court finds $7,137.75 to be grossly excessive and not normally taxed, and, accordingly, disallows the same. Stenographic services and xeroxing are matters counsel should provide as of course in connection with the rendition of legal services. The Court notes that there was no discovery or depositions taken in this case, and that kind of expense which would be allowable is not pertinent here. Although the Court

is not in a position to dictate to counsel how to run their offices with the greatest economy and efficiency, the Court will not permit these costs to be taxed to the class. The costs listed in the disbursement record are to be absorbed by counsel.

Dated: September 28, 1973

/s/ Charles R. Richey
CHARLES R. RICHEY
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 626-73

[Filed Sep. 28, 1973, James F. Davey, Clerk]

NICHOLAS J. LARINOFF, JR., ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, ET AL., DEFENDANTS

ORDER

This case came before the Court on Cross Motions for Summary Judgment. The Court having considered both parties' Memoranda of Points and Authorities in support of their Motions and in opposition to opposing motions, and having heard argument of counsel and in accordance with the Court's Memorandum opinion of even date herewith, it is, by the Court this 28th day of September, 1973,

ORDERED, that this matter hereby is certified as a class action under Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure to include those enlisted Navy personnel who had (or earned after entering a special training program) a critical military skill, who signed their first term reenlistment contract when that critical military skill was eligible for a Variable Reenlistment Bonus (VRB), but who were denied the VRB because their reenlistment period began to run after the suspension of the VRB on July 1, 1972; and it is

FURTHER ORDERED, that judgment be entered against the Defendants for breach of their reenlistment contract obligation to pay the members of the class the VRB in effect at the execution of the reenlistment contract execution, when the members of the class began their reenlistment period; and it is

FURTHER ORDERED, that the Defendants pay to the members of the class the VRB authorized under 37 U.S.C. § 308(g) for first term reenlistment; and it is

FURTHER ORDERED, that the Plaintiffs' counsel be awarded $14,729.00 in attorney's fees to be paid from the class recovery as more particularly described in the Court's Opinion of even date herewith. Each individual recovery shall be taxed for its pro-rata share of this award; and it is

FURTHER ORDERED, that Plaintiffs' counsel refund to the representative Plaintiffs $2,700.00 in retainer fees.

/s/ Charles R. Richey
CHARLES R. RICHEY
United States District Judge

APPENDIX F

STATUTES AND REGULATIONS INVOLVED

The Act of September 7, 1962, Pub. L. No. 87-649, 76 Stat. 467 [formerly 37 U.S.C. 308(a) through (f)]:

(a) Subject to subsections (b) and (c) of this section, a member of a uniformed service who reenlists in a regular component of the service concerned within three months after the date of his discharge or release from compulsory or voluntary active duty (other than for training), or who voluntarily extends his enlistment for at least two years, and who is not covered by section 207 of the Career Compensation Act of 1949, as amended (70 Stat. 338), is entitled to a bonus computed as follows:

Reenlistment involved [1]	Column 1 Take—	Column 2 Multiply by—
First	Monthly basic pay to which member was entitled at the time of discharge or release.[2]	Number of years specified in reenlistment contract, or six, if none specified.[3]
Second	Two-thirds of the monthly basic pay to which the member was entitled at the time of discharge or release.[4]	Do.[3]
Third	One-third of the monthly basic pay to which the member was entitled at the time of discharge or release.[5]	Do.[3]
Fourth (and subsequent)	One-sixth of the monthly basic pay to which the member was entitled at the time of discharge or release.[5]	Do.[3]

[1] Any reenlistment when a bonus was not authorized is not counted.

[2] Two-thirds of the monthly basic pay in the case of a member in pay grade E-1 at the time of discharge or release.

[3] On the sixth anniversary of an indefinite reenlistment, and on each anniversary thereafter, the member is entitled to a bonus equal to one-third of the monthly basic pay to which he is entitled on that anniversary date.

[4] A bonus may not be paid to a member in pay grade E-1 or E-2 at the time of discharge or release.

[5] A bonus may not be paid to a member in pay grade E-1, E-2, or E-3 at the time of dicharge or release.

(b) A member who reenlists—

(1) during his prescribed period of basic recruit training; or

(2) after completing 20 years of active Federal service;

is not entitled to a bonus. A member who reenlists before completing 20 years of active Federal service, but who will, under that enlistment, complete more than 20 years of that service, is entitled to a bonus

computed by using as a multiplier only the number of years that, when added to his previous service, totals 20 years.

(c) The total amount that may be paid to a member under this section, or under this section and any other law authorizing a reenlistment bonus, may not be more than $2,000.

(d) An officer of a uniformed service who reenlists in that service within three months after his release from active duty as an officer is entitled to a bonus computed under subsection (a) of this section, if he served as an enlisted member in that service immediately before serving as an officer. For the purposes of this subsection, the monthly basic pay, or appropriate fraction if the member received a bonus for a prior enlistment, of the grade in which he is enlisted, computed in accordance with his years of service computed under section 205 of this title, shall be used in column 1 of the table in subsection (a) of this section instead of the monthly basic pay to which he was entitled at the time of his release from active duty as an officer.

(e) Under regulations approved by the Secretary of Defense, or by the Secretary of the Treasury with respect to the Coast Guard, a member who voluntarily, or because of his misconduct, does not complete the term of enlistment for which a bonus was paid to him under this section shall refund that percentage of the bonus that the unexpired part of his enlistment is of the total enlistment period for which the bonus was paid.

(f) The Secretary concerned may prescribe regulations for the administration of this section in his department.

The Act of August 21, 1965, Pub. L. No. 89-132, § 3, 79 Stat. 547 [formerly 37 U.S.C. 308(g)]:

(g) Under regulations to be prescribed by the Secretary of Defense, or the Secretary of the Treasury with respect to the Coast Guard when it is not operating as a service in the Navy, a member who is designated as having a critical military skill and who is entitled to a bonus computed under subsection (a) of this section upon his first reenlistment may be paid an additional amount not more than four times the amount of that bonus. The additional amount shall be paid in equal yearly installments in each year of the reenlistment period. However, in meritorious cases the additional amount may be paid in fewer installments if the Secretary concerned determines it to be in the best interest of the members. An amount paid under this subsection does not count against the limitation prescribed by subsection (c) of this section on the total amount that may be paid under this section.

ARMED FORCES ENLISTED PERSONNEL BONUS REVISION ACT OF 1974, Pub. L. 93-277, 88 Stat. 19

An Act to amend chapter 5 of title 37, United States Code, to revise the special pay bonus structure re-

lating to members of the armed forces, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That:

This Act may be cited as the "Armed Forces Enlisted Personnel Bonus Revision Act of 1974".

Sec. 2. Chapter 5 of title 37, United States Code, is amended as follows:

(1) Section 308 is amended to read as follows:

"§ 308. Special pay: reenlistment bonus

"(a) A member of a uniformed service who—

"(1) has completed at least twenty-one months of continuous active duty (other than for training) but not more than ten years of active duty;

"(2) is designated as having a critical military skill by the Secretary of Defense, or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy;

"(3) is not receiving special pay under section 312a of this title; and

"(4) reenlists or voluntarily extends his enlistment in a regular component of the service concerned for a period of at least three years;

may be paid a bonus, not to exceed six months of the basic pay to which he was entitled at the time of his discharge or release, multiplied by the number of years, or the monthly fractions

thereof, of additional obligated service, not to exceed six years, or $15,000, whichever is the lesser amount. Obligated service in excess of twelve years will not be used for bonus computation.

"(b) Bonus payments authorized under this section may be paid in either a lump sum or in installments.

"(c) For the purpose of computing the reenlistment bonus in the case of an officer with prior enlisted service who may be entitled to a bonus under subsection (a) of this section, the monthly basic pay of the grade in which he is enlisted, computed in accordance with his years of service computed under section 205 of this title, shall be used instead of the monthly basic pay to which he was entitled at the time of his release from active duty as an officer.

"(d) A member who voluntarily, or because of his misconduct, does not complete the term of enlistment for which a bonus was paid to him under this section shall refund that percentage of the bonus that the unexpired part of his enlistment is of the total enlistment period for which the bonus was paid.

"(e) This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under his jurisdiction, and by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

"(f) No bonus shall be paid under this section with respect to any reenlistment, or voluntary extension of an active-duty enlistment, in the armed forces entered into after June 30, 1977."

(2) Section 308a is amended to read as follows:

"§ 308a. Special pay: enlistment bonus

"(a) Notwithstanding section 514(a) of title 10 or any other law, under regulations prescribed by the Secretary of Defense, or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, a person who enlists in an armed force for a period of at least four years in a skill designated as critical, or who extends his initial period of active duty in that armed force to a total of at least four years in a skill designated as critical, may be paid a bonus in an amount prescribed by the appropriate Secretary, but not more than $3,000. The bonus may be paid in a lump sum or in equal periodic installments, as determined by the appropriate Secretary.

"(b) Under regulations prescribed by the Secretary of Defense, or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, a person who voluntarily, or because of his misconduct, does not complete the term of enlistment for which a bonus was paid to him under this section shall refund that percentage of the bonus that the unexpired part of his enlistment is of the total enlistment period for which the bonus was paid.

"(c) No bonus shall be paid under this section with respect to any enlistment or extension of an initial period of active duty in the armed forces made after June 30, 1977."

Sec. 3. Notwithstanding section 308 of Title 37, United States Code, as amended by this Act, a member of a uniformed service on active duty on the effective date of this Act, who would have been eligible, at the end of his current or subsequent enlistment, for the reenlistment bonus prescribed in section 308(a) or (d) of that title, as it existed on the day before the effective date of this Act, shall continue to be eligible for the reenlistment bonus under that section as it existed on the day before the effective date of this Act. If a member is also eligible for the reenlistment bonus prescribed in that section as amended by this Act, he may elect to receive either one of those reenlistment bonuses. However, a member's eligibility under section 308(a) or (d) of that title, as it existed on the day before the effective date of this Act, terminates when he has received a total of $2,000 in reenlistment bonus payments, received under either section 308(a) or (d) of that title as it existed on the day before the effective date of this Act, or under section 308 of that title, as amended by this Act, or from a combination of both.

Sec. 4. The amendments made by this Act become effective on the first day of the month following the date of enactment.

Approved May 10, 1974.

37 U.S.C. 906 provides in relevant part:

A member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, who extends his enlistment under section 509 of title 10 is entitled to the same pay and allowances as though he had reenlisted.

DEPARTMENT OF DEFENSE DIRECTIVE 1304.14:

* * * *

IV. OBJECTIVES AND POLICIES

* * * *

B. *Authority to Designate Military Skills*

1. *Designated Military Specialties.* Subject to review and prior approval by the Secretary of Defense, the Secretary of a Military Department may designate a military specialty for award of the Variable Reenlistment Bonus, Shortage Specialty (Proficiency Pay) or a combination of both these awards in accordance with the criteria specified in subsection D. below.

* * * *

F. *Reduction and Termination of Awards.* When a military skill is designated for reduction or termination of award an effective date for reduction or termination of awards shall be established and announced to the field at least 90 days in advance. All awards on or after that effective date in military skills designated for reduction of award level will be at the level effective that date and no new awards will be made on or after the effective date in military skills designated for termination of awards.

1. *For Both Variable Reenlistment Bonus and Shortage Specialty (Proficiency Pay).* Secretaries of the Military Departments and the Assistant Secretary of Defense (Manpower and Reserve Affairs) will conduct an annual review of the retention and career manning situation in any military specialty that has attained or is projected to attain a career manning level of more than 105 percent.

   a. If it no longer meets the criteria of subsection IV.D. above, it will be designated for either reduction or termination of award.

   b. The review will consider the projected retention and career manning situations in the absence of the then current award so that a military specialty will not be designated for reduction or termination of award solely because the then current award has attained and is sustaining adequate retention and career manning in the military specialty.

* * * *

DEPARTMENT OF DEFENSE INSTRUCTION 1304.15:

* * * *

V. *CRITERIA*

* * * *

B. *Individual Eligibility for Receipt of Awards*

1. *Variable Reenlistment Bonus.* An enlisted member is eligible to receive a Variable Reenlistment Bonus if he meets all the following conditions:

* * * *

b. Has completed at least 21 months of continuous active service other than active duty for training immediately prior to discharge, release from active duty, or extension of enlistment.

* * * *

f. Attains eligibility prior to the effective date of termination of awards in any military specialty designated for termination of the award. Member must attain eligibility prior to the effective date of a reduction of award level to be eligible for the higher award level. Eligibility attained through any modification of an existing service obligation, including any early discharge granted pursuant to 10 U.S.C. 1171, must have been attained prior to the date the authority approving the modification was notified of the prospective termination or reduction of award in the military specialty.

* * * *

VI. *MAINTENANCE, REDUCTION, AND TERMINATION OF AWARDS*

A. *Variable Reenlistment Bonus.* Members serving in a military specialty designated for reduction or termination of award under the provisions of subsection IV.F. of reference (a), will receive the award level effective on the date of their reenlistment or extension of enlistment, except as provided in paragraph V.B.1.f. above.

* * * *

BUPERS INSTRUCTION 1133.18B
(December 19, 1968)

From: Chief of Naval Personnel

To: All Ships and Stations (less Marine Corps field addressees not having Navy personnel attached)

Subj: Variable Reenlistment Bonus (VRB) Program

* * * *

4. *Definitions*

* * * *

c. *VRB Multiple.* The VRB multiple is established by a relative ranking of all ratings in order of career petty officer shortage. From this ranking, and considering the training investment, an appropriate VRB multiple is assigned to the ratings with career petty officer shortages. This determination will be performed as required and at least annually. Enclosure (1) will be revised accordingly. Enclosure (2) shows the effective dates and past VRB multiple assignments, and demonstrates that VRB eligibility changes periodically according to service needs.

* * * *

5. *Policy*

* * * *

f. A review of current and projected manning and retention situations will be conducted in the ratings NEC's which attain or are expected to attain a career manning level of 105%. If it no longer meets the criteria in the table above, the rating NEC will be designated for reduction or termination of the award. In such case, the effective date of the reduction or termination will be announced to the field at least 90 days in advance.

* * * *

i. VRB eligibility is not retroactive. Entitlement to a VRB vests only on the date the member reenlists (and is entitled to a first regular reenlistment bonus) and only if his rating or NEC is then currently on the effective list in enclosure (1), and only at the multiple specified therein. To prevent error and misunderstanding, enclosure (1) will always include an

effective date of the listing. Retroactive payment of VRB to a member whose rating or multiple has been added to or changed on the list, but who reenlisted before the effective date, cannot be authorized.

6. *Eligibility.* To receive the VRB an individual must meet all of the following requirements for which no waivers will be made.

* * * *

d. Have completed at least 21 months of continuous active service, other than active duty for training, immediately prior to becoming eligible for the first regular reenlistment bonus.

* * * *

g. Attain eligibility prior to the effective date of termination of the VRB award in a rating NEC designated for termination. Eligibility attained through an early discharge for the purpose of immediate reenlistment, or extension of enlistment, must have been attained prior to the date on which the prospective termination is announced.

VRB ELIGIBLE RATINGS WITH MULTIPLES

Effective 1 July 1969

RATING	MULTIPLE
Aviation Fire Control Technician (AQ)	4
Aviation Electronics Technician (AT)	4
Aviation Anti-Submarine Warfare Operator (AW)	4
Boilerman (BT)	4
Communications Tech. (CT)	4
Damage Controlman (DC)	4
Data Processing Tech. (DP)	4
Data Systems Technician (DS)	4
Electricians Mate (EM)	4
Engineman (EN)	4
Electronics Technician (ET)	4
Fire Control Technician (FT)	4
Interior Communications Electrician (IC)	4
Machinist's Mate (MM)	4
Photographic Intell. Man (PT)	4
Quartermaster (QM)	4
Radarman (RD)	4
Radioman (RM)	4
Shipfitter (SF)	4
Sonar-Technician (ST)	4
Air Controlman (AC)	3
Aviation Electrician's Mate (AE)	3
Aviation Ordnanceman (AO)	3
Gunner's Mate (GUNS) (GMG)	3
Gunner's Mate (TECH) (GMT)	3
Machinery Repairman (MR)	3
Opticalman (OM)	3
Signalman (SM)	3
Torpedoman's Mate (TM)	3
Builder (BU)	2
Construction Electrician (CE)	2
Construction Mechanic (CM)	2
Disbursing Clerk (DK)	2
Engineering Aid (EA)	2
Equipment Operator (EO)	2
NEC SKILL Hospital Corpsman (HM) (For Following NEC's Only)	
8406 Aviation Medicine Technician	2
841X Laboratory Technician	2
8432 Preventive Medicine Tech.	2
8492 Special Operations Tech.	2
8493 Medical Deep Sea Diving Tech.	2
Instrumentman (IM)	2
Steelworker (SW)	2
Utilities Man (UT)	2
Aerographer's Mate (AG)	1
Aviation Structural Mechanic (AM)	1
Commissaryman (CS)	1
Patternmaker (PM)	1
Storekeeper (SK)	1

INFORMATION OF SPECIAL INTEREST TO NAVAL PERSONNEL

BUPERSINST 1133.18B
of 19 December 1968

Subj: Variable Reenlistment Bonus (VRB) Program

* * * *

All Navy ratings are considered for VRB in accordance with criteria established by DOD. Those ratings eligible for the remainder of FY 69 are listed at their assigned multiple in enclosure (1) of the instruction.

* * * *

Since the number of careerists in a rating is significant in determining rating eligibility, the list of eligible ratings is subject to change.

* * * *

BUPERSMAN Art. C-1407:

* * * *

(1) *Definitions.* In the discussion of extensions of enlistments in this article, the following definitions are applicable:

* * * *

(c) "Extension becomes Operative"—This refers to the date on which the Extension of Enlistment goes into effect and service thereunder commences. Unless cancelled prior thereto under any one of the conditions set forth in paragraph (8) below, an Agreement to Extend Enlistment executed during an enlistment or an enlistment as extended becomes operative on the date next following the normal date

of expiration of enlistment, or the date of expiration of enlistment as voluntarily extended or as extended for the purpose of making up time not served, as appropriate.

* * * *

(8) *Cancellation of Extensions.*

* * * *

(b) Commanding officers *shall* cancel agreements to extend enlistment, prior to operative date, in the following cases:

* * * *

4. Except as provided in subparagraph 5 below, when an individual, through no fault of his own, has not received any of the benefits for which the extension was executed by the day next preceding the operative date of the extension. Thus, if a member executed an agreement to extend enlistment and has been ordered or assigned to duty, such as duty ashore, overseas service, or any special program, for which he agreed to extend or has had his tour date adjusted, been advanced, or has received any benefits therefrom, by the day next preceding the date the extension would become operative, the agreement to extend enlistment may not be cancelled. Members whose extensions are cancelled pursuant to the above who desire to continue on active duty may simultaneously therewith execute new extension or reenlist in accordance with applicable directives notwithstanding the time limits specified in Art. C-1407 (3)(a). In such cases if the individual executes a new extension, show as a reason "To continue career."

Department of Defense Pay And Entitlement Manual:

CHAPTER 9

SPECIAL PAY—REENLISTMENT BONUS—ENLISTED MEMBERS

SECTION A—
REGULAR REENLISTMENT BONUS

(37 U.S.C. 308(a) through (c))

* * * *

10905. Time of Payment

Payment of regular reenlistment bonus is normally made on the day the member reenlists. A member who extends his enlistment for 2 years or more is not paid the bonus for the extension until he actually begins serving the extension.

* * * *

SECTION B—

VARIABLE REENLISTMENT BONUS

37 U.S.C. 308(g)

10911. Variable Reenlistment Bonus (VRB)

* * * *

10913. Method and Intervals of Payment

The VRB is paid in equal annual installments. The first installment is payable at the same time the regular reenlistment bonus is paid. Later installments

are payable on the anniversary date in each year of the reenlistment period, unless there is lost time. In this case the subsequent installment payments are delayed by the number of days of lost time. Payment may be made in fewer installments in meritorious cases when authorized. Application for reduction in the number of installments is proccessed in accordance with the prescribing personnel directives of the service concerned.

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Supreme Court, U. S.
FILED
OCT 12 1976
MICHAEL RODAK, JR., CLERK

No. 76-413

In the Supreme Court of the United States

OCTOBER TERM, 1976

UNITED STATES OF AMERICA, ET AL., PETITIONERS

v.

NICHOLAS J. LARIONOFF, JR., ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE PETITIONERS

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1976

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE PETITIONERS

We pointed out in our petition for a writ of certiorari that the decision in this case conflicts with the decision of the Fourth Circuit in *Carini* v. *United States,* 528 F. 2d 738, petition for a writ of certiorari pending, No. 75-1695. We also noted that the question presented here had been presented to and was awaiting decision in, *inter alia,* the Ninth Circuit in *Collins* v. *Rumsfeld,* Nos. 75-2935, 75-2967, 75-3348, 75-3432 and 75-3559.

On September 27, 1976, the Ninth Circuit entered judgment in favor of the government in *Collins*. The Ninth Circuit held that service personnel do not acquire a vested right to the payment of "variable reenlistment bonuses" at the time that they agree to extend their enlistments in the United States Navy. In so holding, the Ninth Circuit explicitly refused to follow the decision of the District of Columbia Circuit in this case and aligned itself with the

Fourth Circuit's decision in *Carini*. The court's opinion in *Collins* is set forth in the Appendix, *infra*.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1976.

DOJ-1976-10

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

EARL B. COLLINS, ET AL.,

Plaintiffs-Appellees and Cross-Appellants,

Nos. 75-2935, 75-2967

v.

DONALD H. RUMSFELD, ET AL.,

Defendants-Appellants and Cross-Appellees.

and other consolidated cases

Nos. 75-3238, 75-3432 75-3348, 75-3559

OPINION

Filed: September 27, 1976

EMIL E. MELFI, JR.
Clerk, U.S. Court of Appeals

On Appeals from the United States District Court for the District of Hawaii; the United States District Court for the Southern District of California; and the United States District Court for the Central District of California

BEFORE: CHAMBERS and SNEED, Circuit Judges, and SWEIGERT*, District Judge:

---

*The Honorable William T. Sweigert, Senior United States District Judge for the Northern District of California, sitting by designation.

SNEED, Circuit Judge:

These are cases in which the not unreasonable expectations of the plaintiffs must be disappointed in order to serve the common good as perceived by Congress. This provides little comfort to the plaintiffs who are enlisted naval personnel, but our recognition of this perception of Congress extinguishes any power on our part to intervene.

In brief, the cases amount to this. The plaintiffs, while on active duty in the Navy, entered into agreements to extend their enlistments for an additional two or three years, which additional terms were to commence on various dates, all subsequent to June 1, 1974, the effective date of the Armed Forces Enlisted Personnel Bonus Revision Act of 1974.[1] At the time these agreements to extend enlistments were executed the law and applicable regulations authorized the payment of certain bonuses designated as Variable Reenlistment Bonuses (VRB's). Each plaintiff was induced to agree to extend his enlistment by the prospect of receiving in due course a VRB. Prior to the commencement of a period of extended enlistment with respect to any plaintiff, the applicable law was changed by the Bonus Revision Act of 1974. Each of the plaintiffs, either before or after the effective date of the 1974 Act, completed the training which was necessary to qualify for a VRB. The 1974 Act abolished the VRB's and substituted therefor Selective Reenlistment Bonuses (SRB's) for which each plaintiff might qualify but for which he was not then, nor has he become, qualified. The plaintiffs contend that notwithstanding the 1974 Act they are entitled to VRB's upon qualification therefor and commencement of their reenlistment periods. We hold to the contrary and reverse the holdings of the trial courts.

---

[1]Pub. L. No. 93-277, 88 Stat. 119 (*codified in part at* 37 U.S.C. §§ 308, 308a (Supp. IV, 1974)).

I.

To justify our holding we turn to the agreements to extend enlistments executed by the plaintiffs. Each agreed to extend his enlistment "in consideration of the pay, allowances, and benefits which will *accrue* to me during the continuances of my service." (*Italics* added). No one contends that entitlement to a VRB *accrued* at the time the reenlistment agreement was executed. This is acknowledged even though each trial court found that the plaintiffs were induced to extend their enlistments because of the prospect of VRB's. Moreover, this acknowledgment is considered compatible with the fact that the Navy during the time VRB's were available used the program to induce the reenlistment of personnel having "critical skills" and instructed its personnel concerned with obtaining extensions of enlistments to stress the advantages of early reenlistments.

This recognition that an entitlement to a VRB did not *accrue* on execution of the reenlistment agreement is consistent with the applicable legislative history of the 1974 Act. In the deliberations leading to that Act the Navy expressed "great concern" that the bill "might be interpreted to require it to abrogate an understanding it had with enlistees." Conf. Rep. No. 93-985, 93d Cong., 2d Sess. 4 (1974). The Conference Report contains this response to the Navy's concern:

> The Navy expressed great concern that the language of the bill might be interpreted to require it to abrogate an understanding it had with enlistees and would operate in such a way as to cause serious retention problems in its most critical career field. The conferees, therefore, want it understood that while it normally does not expect bonuses to be paid for services for which there was an existing obligation, it is consistent with the conferees' understanding that

> full entitlement to SRB will be authorized for personnel who have already agreed to an extension period prior to the enactment of the legislation if they subsequently cancel this extension prior to its becoming operative and reenlist for a period of at least two years beyond the period of the cancelled extension. Nothing in the bill should operate to deny the Chief of Naval Operations the authority to extend SRB entitlement to nuclear-power operators, if they subsequently can cancel any outstanding extension period prior to its becoming operative and reenlist for a period of at least two years beyond the period of the cancelled extension.

The above "understanding" of the conferees is completely at odds with the notion that the enlistees about whom the Navy was concerned already has accrued rights to VRB's. Such enlistees, among whom are the plaintiffs, were extended an opportunity to qualify for SRB's, but not VRB's.

Had Congress intended to maintain that opportunity VRB's would have been treated similar to Regular Reenlistment Bonuses (RRB's) which were preserved for every enlisted member on active duty on the effective date of the 1974 Act. This preservation was provided to prevent those entitled from "losing their $2,000 reenlistment entitlement which by law they expected to receive." H. Rep. No. 93-857, 93d Cong., 2d Sess. 6 (1974). No comparable provision applicable to VRB's was enacted.

II.

Having held that entitlement to a VRB did not accrue on the date an agreement to extend an enlistment was executed, we confront the issue whether Congress immediately thereafter had the power to alter, or abolish entirely, the VRB. We believe it did because bonuses are

a form of pay entitlement to which, in the words of *Bell* v. *United States,* 366 U.S. 393, 401 (1961), "is dependent upon statutory right" and not "common law rules governing private contracts." When the statute upon which the right to an unaccrued bonus rests is altered, any right to such bonus is also altered. We construe *Carini* v. *United States,* 528 F. 2d 738 (4th Cir. 1975) to so hold and we agree.

The appeal of the plaintiffs' cases lies in the fact that Congress deferred abolishing the VRB's for a signigicant period of time following the execution of the reenlistment agreements. Expectations aged and, to the reenlistees, became no less than practical certainties. Nonetheless, entitlement thereto remain a "statutory right" subject to Congress' power to alter or abolish.

It may well be that, upon accrual of the right to a VRB, the power of Congress to alter or abolish is more limited. See *Lynch* v. *United States,* 292 U.S. 571, 577 (1934).[2] Such an issue, however, is not before us because we are convinced, and so hold, that at no time prior to commencement of the reenlistment period did a right to VRB's accrue.[3]

---

[2]Impairment of existing contract rights, it has been said, requires the exercise of a paramount governmental power such as the War Power. See *Larionoff* v. *United States,* ___ F. 2d ___ (D.C. Cir. 1976); *Federal Housing Administration* v. *Darlington,* 358 U.S. 84, 97-98 (Harlan dissenting) (1958).

[3]It is not necessary for the disposition of this case to determine the precise point in time at which a right to a VRB might have accrued. There is, however, considerable support in 37 U.S.C. § 308(e), as it existed prior to the 1974 Act, as well as the 1974 Act and its legislative history, for the view that the right to a VRB accrued only as it is earned during the reenlistment period. See 37 U.S.C. § 308a(b); H. Rep. No. 93-857, 93d Cong., 2d Sess. 7 (1974). The statutory provisions make clear that the reenlistee who voluntarily or because of misconduct did not complete his reenlistment period was obligated to return "that percentage of his bonus that the unexpired part of

The reenlistment agreements clearly contemplated the possibility of pay, allowances and benefits being altered during either the enlistment or reenlistment periods. The words "which will accrue to me during the continuances of my service" focus on the future and are inconsistent, at least in flavor, with the view that the agreements incorporated and made a part thereof the entire statutory and regulatory provisions pertaining to VRB's as they existed on the date such agreements were executed. It is unlikely the plaintiffs would differ with this had Congress increased the value of VRB's to which they might become entitled rather than abolishing them.

We express no opinion on the manner in which a VRB should be computed had the plaintiffs entered upon their reenlistment period prior to June 1, 1974, the effective date of the 1974 Act. This issue confronted the court in *Larionoff* v. *United States,* ___F. 2d___(D.C. Cir. 1976). We recognize, of course, that the court in *Larionoff* also held that a reenlistee who entered upon his reenlistment period subsequent to the effective date of the 1974 Act was entitled to a VRB. As already indicated we disagree with that holding and, in so doing, align ourselves with *Carini* v. *United States, supra.*

REVERSED.

Judge Sweigert concurring:

I concur with Judge Sneed's result mainly upon the ground set forth in Part II of his opinion.

---

his enlistment is of the total enlistment period for which the bonus was paid." Accrual for the purposes of determining entitlement may proceed differently, however.

Of possible assistance in determining the point in time at which accrual occurs are the cases applying 10 U.S.C. § 857(a) in which is drawn a distinction between accrued and unaccrued pay and allowances for purposes of forfeitures imposed as a result of a court-martial. Forfeiture of accrued pay and allowances is not permitted. See *Dickenson* v. *United States,* 163 Ct.Cl. 512 (1963).

In *Bell* v. *United States,* 366 U.S. 393 (1961), the Supreme Court pointed out that "[C]ommon law rules governing private contracts have no place in the area of military pay . . . [a] soldier's entitlement to pay is dependent upon statutory right." (*Id.* at 401). Quoting from *In re Grimley,* 137 U.S. 147, 151 (1890), the Supreme Court in *Bell* explained that this is so because, although enlistment is a contract, "[I]t is one of those contracts which changes the status; and, where that is changed, no breach of the contract destroys the new status or relieves from the obligations which its existence imposes" (366 U.S. at 402)—a drastic rule but one that may be justified by national defense considerations affecting the unique relationship between soldiers and their government.

In *Carini* v. *United States,* 528 F. 2d 738 (4th Cir. 1975), the Fourth Circuit pointed out that even the plaintiffs before it conceded that the monthly salary they received was not fixed at the rates in effect at the time of the enlistment contracts and concluded from the above-quoted language of *Bell* that an enlistee's monthly salary is "subject to the unfettered control of the Congress". (*Id.* at 401).

In *Larionoff* v. *United States,* 533 F. 2d 1167 (4th Cir. February 17, 1976), petition for rehearing denied, 533 F. 2d 1188 (April 21, and 29, 1976), the D.C. Circuit, referring to the government's contention that enlistment documents must be construed to incorporate, not only the statutes in force at the time the agreement is signed, but future changes in those statutes as well, stated that "[T]he government's point is certainly accurate as to regular pay for enlistees . . . (*Id.* at 1190), indicating, as I read their opinion, a concession that regular pay of enlistees could be changed (up or down or, for that matter, abolished) by Congress during the enlistment term without releasing the soldier from his obligation to complete the terms.

If it be the law that even a soldier's basic pay is subject to change or even elimination without changing his status as a soldier, then I have no difficulty in agreeing with the Fourth Circuit in *Carini* that special incentive pay in the form of a variable reenlistment bonus, which falls well within the definition of pay as broadly defined in 37 U.S.C. 101 (21), is no less subject to the same drastic Congressional control during the term of enlistment than is regular pay.

If we misconstrue *Bell,* it will be for the Supreme Court to make the correction.

The only Supreme Court case cited to the contrary of *Bell* and *Carini,* is *Lynch* v. *United States,* 292 U.S. 571 (1934). The difficulty with the citation of *Lynch* is that *Lynch* involved, not army enlistments, but war risk insurance policies under a 1917 Act which had been repealed by the Congress in 1933. The Supreme Court specifically distinguished such insurance policies from pensions and compensation allowances which are gratuities creating no vested right. (292 U.S. at 597).

If the basic law governing army enlistment pay is as stated in *Bell* and *Carini,* it follows that statutory reduction or abrogation of the variable reenlistment bonus here involved was something that reenlistment soldiers must be held to have anticipated during their enlistment period—however mistaken and disappointed their expections.

In this view of the applicable law, the actual language of the reenlistment contract is not determinative of the issue presented. However, even that language (as Judge Sneed points out) does not militate against the conclusion I reach mainly upon another ground.

APPENDIX

Supreme Court, U. S.
FILED
JAN 24 1977
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-413

UNITED STATES OF AMERICA, ET AL.,
Petitioners

—v.—

NICHOLAS J. LARIONOFF, JR., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED SEPTEMBER 21, 1976
CERTIORARI GRANTED DECEMBER 6, 1976

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-413

UNITED STATES OF AMERICA, ET AL.,
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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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CIVIL DOCKET

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DATE	PROCEEDINGS
1973	
Mar. 30	Complaint, appearance; Affidavits (7), filed DA serv. 4-4; #1 serv. 4-5; #6 serv. 4-4;
Mar. 30	Summons, Copies (7) and Copies (7) of Complaint issued; #2 serv. 4-9; #3 serv. 4-9; #4 serv. 4-9; #5 serv. 4-9;
Mar. 30	Motion of Pltffs. for Declaratory Judgment; P & A's.
Apr. 13	Application of pltfs for temporary restraining order; exhibit, affidavit; C/s 4/13/73.
Apr. 13	Motion of pltfs for preliminary injunction; P & A; P/x 4/12/73 M.C.
*Apr. 13	Order restraining defts. from relocating or assigning pltf. John Clay Smith to such duty that deprives him to right to counsel.(N) Richey, J.
Apr. 13	Injunction undertaking of pltf. in the sum of $100.00 with United States Fidelity and Guaranty Co. approved. Richey, J.
*Apr. 13	Motion for temporary restraining order heard and granted; Bond in amount of $100.00 (OTBP) (Rep: T. Dourian)
Apr. 23	Motion of pltfs. to confirm the class; exhibits 1, 2, 3 and 4; P & A; cs 4/20 M.C.
Apr. 23	Affidavit of Johnnie S. Johnson, s/c 4/23/73.

DATE	PROCEEDINGS
1973	
Apr. 13	Motion of pltfs for summary judgment; exhibits 1; memoradnum; affidavits (5) exhibits A, B, C and D; attachment; statement; c/s 4/20/73 M.C.
Apr. 26	Stipulation extending order restraining deft. from relocating or assigning pltf. Smith to and including 5-15-73; extending time to and including 5-15-73 for deft. to respond to motions for preliminary injunction, confirmation of the class and summary judgment, approved. (fiat) (N) Richey, J.
May 10	Affidavit of John Clay Smith. c/m 5-10
May 15	Motion of defts. for extension of time to answer motion for preliminary injunction; P&A. c/m 5-15 M.C. ap of Michael A. Katz
May 16	Stipulation extending order restraining deft to and including 6-4-73. approved (fiat) (N) (signed 5-15-73) Richey J.
May 25	Points & Authorities by pltfs. in opposition to motion for extension of time; exhibit A, B, c/m 5-25
May 31	Order extending time within which the defts. to respond to the pltfs' motions for preliminary injunction, confirmation of class and for summary judgment to and including 6-4-73. (signed 5-30-73) (N) Richey, J.
June 4	Motion of defts. for extension of time; P & A. c/m 6-4 M.C.
June 15	Points and authorities of pltfs in opposition to motion for extension of time; exhibit A; c/s 6/15/73.
June 18	Answer of defts. to complaint; c/m 6/18/73.

DATE	PROCEEDINGS
1973	
June 18	Memorandum of P & A by defts. in opposition to motions for preliminary injunction and for confirmation of class action and for summary judgment; c/m 6/18/73.
June 18	CALENDARED. CD/N.
June 22	STIPULATION extending order of 4/13/73 to 7/2/73. "fiat" RICHEY, J.
June 27	MOTION of defts. for judgment on the pleadings or in the alternative for summary judgment; statment; P & A in support of motion for judgment on the pleadings and supplemental memorandum of P & A in opposition to pltfs motions for preliminary injunction and for summary judgment; Exhibit (1) A, B, C, D, E, F, G, H, I, J, K, L, M, N, O-1, O-2, O-3, O-4, O-5, O-6, O-7; c/m 6/26/73. M.C.
June 27	OBJECTIONS of defts. to pltfs statement of facts; c/m 6/26/73.
July 19	STIPULATION by parties extending order of 4-13-73 to 8-10-73. (fiat) Richey, J.
Aug. 9	POINTS & AUTHORITIES of pltfs. in opposition to motion for judgment on the pleadings or in the alternative for summary judgment, and supplemental memorandum in aid of jurisdiction and in support of summary judgment for the class; exhibit A. c/s 8-9
Aug. 10	MOTION for class action heard and taken under advisement; motion for preliminary injunction heard and taken under advisement; motion for summary judgment heard and taken under advisement; additional memoranda and motions to be filed by 8-17-73 by pltffs. and responses by defts. to be filed by 8-31-73. (Rep: T. Dourian) Richey, J.

DATE	PROCEEDINGS
1973	
Aug. 16	STIPULATION that pltffs. shall be kept at duty station until 9-10-73, approved. (fiat) (N) Richey, J.
Aug. 16	ORDER allowing pltffs. to file memoranda by 8-17-73 with opposition by defts. to be filed by 8-24-73. (N) Richey, J.
Aug. 20	AMENDED complaint.
Aug. 20	POINTS & AUTHORITIES of pltfs. in support of application for attorneys fees; affidavit; exhibit A., attachments A, B & C.
Aug. 22	ANSWER of defts. to first amended complaint. c/m 8-22
Aug. 23	MEMORANDUM of P & A by defts. in opposition to application for attorneys fees., attachment. c/m 8-23
Aug. 29	AFFIDAVIT of Stephen Daniel Keefe; exhibit 1. c/s 8-29
Sept. 6	AFFIDAVIT of John A. Keeffe.
Sept. 24	MOTION of pltfs. for temporary restraining order; P & A. c/s 9-24
Sept. 26	EXHIBIT 2 to affidavit of John A. Keeffe. c/s 9-26
* * * *	
Oct. 1	STIPULATION that pltffs shall be kept at their duty stations as of August 10, 1973 until September 17, 1973. (Fiat) Richey, J.
Oct. 1	STIPULATION that pltffs shall be kept at their duty stations as of August 10, 1973 until September 24, 1973. Fiat. Richey, J.

DATE	PROCEEDINGS
1973	
Oct. 1	STIPULATION that pltffs shall be kept at their duty stations as of August 10, 1973 until October 5, 1973. Fiat Richey, J.
* * * *	
Sept. 28	MEMORANDUM opinion certifying case as a class action; granting judgment against the defts; awarding attorney's fees. (N) Richey, J.
**Sept. 28	ORDER certifying case as a class action; granting judgment against the defts; directing defts. to pay members of the class for first term reenlistments; awarding counsel fees to be paid from Class recovery; directing counsel for pltffs to refund retainer fees. (N) Richey, J.
Nov. 26	NOTICE of appeal by deft. from order of 9-28-73. Copy mailed to Stephen Daniel Keefe.
Nov. 27	NOTICE of appeal by pltfs. from order of 9-28-73. c/s Michael Katz. deposit $5.00 by Keefe.
Dec. 18	STIPULATION as to payments of bonuses. (fiat) Richey, J.
1974	
Jan. 7	MOTION of defts. to extend time for docketing record on appeal; c/m 1-7-74.
Jan. 9	ORDER extending time for docketing record on appeal to and including 2-6-74. (N) (APP/N) Richey, J.
Feb. 6	RECORD on appeal delivered to USCA. Receipt acknowledged.
Mar. 6	MOTION of plaintiffs for reconsideration; P & A; exhibits 1, 2, 3, 3A, 4; attachment A; affidavit; c/m 3-6-74.

DATE	PROCEEDINGS
1974	
Mar. 14	MEMORANDUM of points and authorities of defendants in opposition to plaintiffs motion for reconsideration; c/m 3-14-74.
Mar. 26	ORDER denying plaintiffs motion for reconsideration. (N) Richey, J.
Apr. 18	STIPULATION to transmit as a supplemental record on appeal March 6, 1974 motion for reconsideration, P & A in support; Exhibits 1, 2, 3, 3A, 4, affidavit of Stephen Daniel Keeffe; Memorandum of P's & A's in Opposition to Plaintiffs' Motion for Reconsideration and Order denying Motion for reconsideration. "Fiat" Richey, J.
Apr. 19	SUPPLEMENTAL record delivered to USCA; Receipt acknowledged.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 626-73

NICHOLAS J. LARIONOFF, JR.
7600 Maple Avenue, Apt. 1207
Tacoma Park, Maryland 20012,

THOMAS W. DIETZ
Box 636 Building 403
Fort Myer, Virginia 22211,

JOSEPH R. TOMAINO
5615 Derby Court, Apt. A
Alexandria, Virginia 22311,

LAWRENCE E. WHITE
Box 778 Building 403
Fort Myer, Virginia 22311,

PAUL E. BOUDREAU
7514 Dover Lane
Lanham, Maryland 20801,

JOHNNIE S. JOHNSON
3267 Queenstown Drive, Apt. 1001
Mount Rainier, Maryland 20822,

and

JOHN CLAY SMITH
USS John F. Kennedy (CVA-67)
FPO New York, New York 09501
on behalf of themselves and all
others similarly situated, PLAINTIFFS

vs.

THE UNITED STATES OF AMERICA,

and

HONORABLE ELLIOTT RICHARDSON
Secretary of Defense
Room 3E880
Pentagon, Washington, D.C. 20301,

HONORABLE JOHN W. WARNER
Secretary of the Navy
Room 4E686, Pentagon
Washington, D.C. 20350,

ADM. ELMO R. ZUMWALT, JR.
Chief of Naval Operations
Room 4E600, Pentagon
Washington, D.C. 20350,

V. ADM. DAVID H. BAGLEY
Chief of Navy Personnel
Arlington, Virginia 20380,

and

CAPT. J. W. PEARSON
Commanding Officer Naval Security Station
Naval Security Station
3801 Nebraska Avenue, N.W.
Washington, D.C. 20390, DEFENDANTS

COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF

JURISDICTION AND VENUE

1. *Jurisdiction*

A. Plaintiffs institute this action pursuant to title 28 § 1346 of the judicial code of the U.S. for equitable relief based on breach of their reenlistment contracts. Plaintiffs further invoke §§ 2201 and 2202 of Title 28 U.S. Code for a declaration of rights and obligations of the parties herein, as hereinafter more fully appears.

2. *Venue*

A. The defendants and each of them are officers of the U.S. Government who in their official capacity are carrying out their duties both within and without the District of Columbia.

B. The defendants, and each of them, are inhabitants of, or are found within, the District of Columbia.

C. The claim or claims hereinafter alleged arose in the District of Columbia and in all or several of the States within the United States.

PLAINTIFFS AND PLAINTIFFS' CLASSES

3. Plaintiffs are residents as indicated in the above heading who enlisted in the U.S. Navy for an original period of four years and who subsequently reenlisted for an additional period of two years service. Plaintiffs' extended their term of service to receive pay, allowances and benefits promised to them in addition to special training. They have received their special training and are or about to be compelled to serve this additional two years service without their promised bonus.

4. As a result of subsequent modification, reduction and elimination, and other abnormal actions by the defendants for the purpose of reducing their financial commitments, a serious and detrimental effect on plaintiffs with respect to the pay, allowances and benefits con-

tracted for and due or about to accrue to them has occurred.

5. Plaintiffs bring this action on behalf of themselves and on behalf of all others similarly situated pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure.

6. The class or classes of person represented by the plaintiffs listed below include:

a. All persons in the U.S. Navy who reenlisted for two years additional duty prior to July 1, 1972, in a critical skill training program pursuant to § 308(g) Title 37 U.S. Code, that had a bonus multiple of four prior to the above date and which was subsequently eliminated upon that date.

1. Nicholas J. Larionoff, Jr.
2. Thomas W. Dietz
3. Joseph R. Tomaino
4. Lawrence E. White
5. Paul E. Boudreau
6. Johnnie S. Johnson
7. John Clay Smith

NEED FOR "CLASS ACTION" PROCEDURE

7. The aforesaid Class is so numerous and geographically so widely situated and distributed that joinder of all members is impracticable. There are questions of law and fact common to each class. The claims of the representative plaintiffs are typical of the claims of the class and plaintiffs will fairly and adequately protect the interests of the class.

8. The prosecution of separate actions by individual members of the aforesaid class would create the risk of:

A. Inconsistent or varying adjudications in different jurisdictions with respect to individual members of the class which would establish incompatible standards of conduct for the parties comprising the class; and

B. Adjudications with respect to individual members of the class would, as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests.

9. The questions of law and fact common to the members of the aforesaid class predominate over any questions affecting only individual members and a class action is superior to other available methods for fair and efficient adjudication of the controversy.

10. The defendants have acted or have refused to act on grounds generally applicable to plaintiffs and the members of the aforesaid class, thereby making appropriate relief against the defendants and in favor of the plaintiffs and the members of the class as a whole.

DEFENDANTS

11. Defendants are the United States of America and officials in the U.S. Department of Defense or the U.S. Navy responsible for its decisions. Each of these defendants is sued in its official capacity.

CONTRACT VIOLATION

12. Each of the plaintiffs in the class they represent executed reenlistment commitments in the U.S. Navy prior to July 1, 1972.

13. Before and after the period in which plaintiffs executed reenlistment commitments their pay allowances and benefits were fixed by the defendants pursuant to § 308(g) Title 37 U.S. Code.

14. On July 1, 1972, the defendants breached the contractual relationship between them and each of the plaintiffs and the class they represent in that the bonus fixed by their reenlistment contracts was eliminated but they are required to serve an additional two years in the United States Navy. Plaintiff alleged on or about July 1, 1972, defendants substantially reduced the pay allowances and benefits which were payable to each plaintiff and their class thereby breaching their reenlistment contracts.

RELIEF SOUGHT

WHEREFORE, plaintiffs pray that:

A. Declaratory judgment be entered in favor of the plaintiffs declaring the rights of the plaintiffs and the obligations of the defendants under the contract.

B. Upon the entry of said declaratory judgment, the Court set the case down for prompt hearing to fashion the relief required for each plaintiff.

C. Such other and further relief as is necessary and proper.

D. They be awarded reasonable attorney's fees and costs to be paid by the defendants.

FRYE & KEEFFE

STEPHEN DANIEL KEEFFE
Attorney for Plaintiffs
733 15th Street, N.W.
Washington, D.C. 20005
783-5775

Of Counsel

JOHN A. KEEFFE
KEEFFE & COSTIKYAN
501 Fifth Avenue
New York, New York 10017
MU 2-2166

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 626-73

NICHOLAS J. LARIONOFF, JR., ET AL., PLAINTIFFS

vs.

THE UNITED STATES OF AMERICA, ET AL., DEFENDANTS

AFFIDAVIT

Paul E. Boudreau, deposes and states as follows:

1. I joined the Navy on September 5, 1968, at which time my recruiter offered me a six year program in electronics. I declined that offer because I was graduating from an Electronic Technicians school in Boston and only wanted to serve four years.

2. Once in RT, I was again interviewed and again offered a six year program but this time in the communications field. I hesitated saying that I really wanted only four years but wanted anything in the field of electronics. The recruiter said that there was nothing open at that time in the electronic field for a four year enlistment and went on to explain what the six year AEF program had to offer. He said that I would go to school for over a year, have automatic advancement upon completion of school, and would receive a bonus once my two year extension went into effect.

3. I was told that this bonus, called a VRB, worked on the principal depending upon my rate at the time the extension was to go into effect, time I've spent in the service, and the number or multiple factor of that particular rate. At that time the multiple factor was the highest, a X4 factor. The figure was something over three thousand dollars. To date, I have had my schooling

and have received my automatic third class rate but VRB was cancelled six months prior to my collecting it.

/s/ Paul E. Boudreau
PAUL E. BOUDREAU

Subscribed and sworn to before
me this 20th day of April, 1973.

/s/ Barbara H. Guth
Notary Public

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 626-73

NICHOLAS J. LARIONOFF, JR., ET AL., PLAINTIFFS

vs.

THE UNITED STATES OF AMERICA, ET AL., DEFENDANTS

AFFIDAVIT

I, Joseph Roy Tomaino deposes and states as follows:

1. I enlisted in the United States Navy on March 28, 1969. I was given a battery of aptitude tests to determine in which area I was most skilled. After completing the tests I was told that I qualified for the advanced electronics field which was a six year program, but I didn't have to decide until my fourth week in RT camp.

2. On April 14, 1969 the company I was in was sent to see the career planning people. It was at this time that I was introduced to the Communications Technicians Field, CTM branch. I was told that it was my duty to serve my country in this critical rate which was undermanned. However, this rate was a four year enlistment with a two year extension, obligating me to serve a total of six years. In return for the two year extension three basic promises were made:

a. I would be sent to an Electronics Technicians "A" school for training in basic electronics, with great possibilities of receiving additional class "C" school for specialized training.

b. Upon completion of ET "A" school I would be automatically advanced in rate to E-4 or Petty Officer third class.

c. Upon completion of my four year enlistment I would receive a variable reenlistment bonus multiple 4.

4. The VRB bonus was described to me as being vari-

able because it was primarily determined by the reenlistee's basic monthly pay which varied with his rank. The VRB I would receive was figured out for me on numerous occasions, both in RT and in ET "A" school. At no time was the VRB figured at any other multiple than 4, and at no time was I told that the multiple could change.

5. As a result of these promises I am required to serve an additional two years in the Navy without my promised bonus and will not be eligible for discharge until May 27, 1975.

/s/ Joseph Roy Tomaino
JOSEPH ROY TOMAINO

Subscribed and sworn to before
me this 20th day of April, 1973.

/s/ Barbara H. Guth
Notary Public

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 626-73

NICHOLAS J. LARIONOFF, JR., ET AL., PLAINTIFFS

vs.

THE UNITED STATES OF AMERICA, ET AL., DEFENDANTS

AFFIDAVIT

Nicholas J. Larionoff, Jr., being duly sworn deposes and states as follows:

1. I enlisted in the United States Navy on June 23, 1969. I was sent to the Great Lakes, Illinois for recruit training. I entered the CTM rate as follows: During the first weeks of RT I was given a battery of test to determine what field the Navy considered me best suited to enter. A short time later I filled out a personal job preference sheet. My choices included Data Systems (DS), Data Processing (DP), and a few clerical rates. Upon my next classification interview I was told that the DS field was open and that I had a very good chance to make it due to my computor background. My job preference sheet was then altered by the classifier to read DS, first choice, and Advanced Electronics Field Rates second.

2. Two weeks went by and my classifier called me in to tell me that the DS field was closed. I was then told about the CTM Branch because it might afford a chance to work on computors. Later a man from the Navel Security Branch gave me a little more information about the CTM field. Three major points were stressed:

1. Advanced Electronics School
2. Rapid Advancement
3. VRB

VRB was described as the bonus paid at the end of the four year enlistment in consideration of the two year extension. He said that this bonus runs from $2,000 to $4,000 depending on the rate that I had attained. I agreed to consider this proposal.

3. After three days of consideration, I was called back to the classifier. I agreed to join the CTM rate using the data given to me. I reasoned that there was still a chance to get into the computor field and that the bonus promised to me would offset my being away from the job market for two years. Also I might be given the opportunity to change to DS later.

4. As of this date I have received the Advanced Electronics School and was advanced to E-4 in nine months. I have remained an E-4 for three years even though I have been Passed Not Advanced twice on their rating tests. Due to the elimination of VRB I will receive a reenlistment bonus of $800.00.

5. Since becoming a plaintiff in this action I have received order to report to "C" school in Vallejo, California for six weeks and then on to Adak, Alaska for at least one year.

/s/ Nicholas J. Larionoff, Jr.
NICHOLAS J. LARIONOFF, JR.

Subscribed and sworn to before
me this 20th day of April, 1973.

/s/ Barbara H. Guth
Notary Public

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 626-73

NICHOLAS J. LARIONOFF, JR., ET AL., PLAINTIFFS

vs.

THE UNITED STATES OF AMERICA, ET AL., DEFENDANTS

AFFIDAVIT

Thomas W. Dietz, deposes and states as follows:

1. I am a member of the United States Navy stationed at the Naval Security Station, 3801 Nebraska Avenue, Washington, D.C.

2. During the summer of 1969, I contacted the Navy Recruiter in Dickinson, North Dakota seeking information concerning various Navy programs. I became aware at that time that the Navy was offering extra pay as an incentive in certain undermanned or technical ratings.

3. With counseling from the Navy Recruiter we determined that I should enlist under the Advanced Electronics Program. Accordingly, I enlisted as a seaman in the electronics field for a period of four years, on September 3, 1969. The ratings in the Advanced Electronics Program at that time were:

a. Aviation Electronics Technician (AT)
b. Communications Technician ("M" Branch) (CTM)
c. Data Systems Technician (DS)
d. Electronics Technician (ET)
e. Fire Control Technician (FT)
f. Sonar Technician (ST)

The variable reenlistment bonus for all of the above was a multiple of four. This fact was pointed out many times prior to my original enlistment and subsequent to that enlistment.

4. When the time came for me to sign the two year extension in RTC, I was again told about the VRB for all the ratings in the electronics field. Also, explained to me, were the rapid advancement in the CT "M" rating and the enhanced shore duty possibilities for CTM's.

5. I would have definitely not signed the Extension of the Enlistment contract if the personnel involved in my counseling procedure had presented the possibility that the VRB could be withdrawn on a moments notice.

6. My original four year enlistment will be completed on September 2, 1973, but because of my extention of enlistment I will be required to serve another 2 years until September 2, 1975.

/s/ Thomas W. Dietz
THOMAS W. DIETZ

Subscribed and sworn to before
me this 20th day of April, 1973.

/s/ Barbara H. Guth
Notary Public

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 626-73

NICHOLAS J. LARIONOFF, JR., ET AL., PLAINTIFFS

vs.

THE UNITED STATES OF AMERICA, ET AL., DEFENDANTS

AFFIDAVIT

Lawrence Edwin White, deposes and states as follows:

1. I am a member of the United States Navy stationed at the Naval Security Station, 3801 Nebraska Avenue, Washington, D.C.

2. I enlisted in the U.S. Navy on March 12, 1969, for an enlistment of four years. Exhibit A. During RT I was told about the advantages of entering in the Advanced Electronics Field. I was promised training and a variable reenlistment bonus in consideration of extending my enlistment for two years. I extended my enlistment on July 23, 1969. Exhibit B.

3. On or about March 12, 1973 I was asked to the Navy Personnel office to once again sign my two year extention and receive a reenlistment bonus. I was advised that I was not entitled to my promised VRB and therefor refused to sign the extention agreement again. Exhibit C. I was advised that this agreement would be put in to effect based upon my contract of July 23, 1969. As a result I am required to serve until March 12, 1975 but the Navy refuses to pay me my VRB.

4. After suit was filed in this action I was called to the personnel office and offered $504.00 as a reenlistment bonus which I refused because I believe my agreement to extend my enlistment is void.

/s/ Lawrence E. White
LAWRENCE EDWIN WHITE

Subscribed and sworn to before
me this 20th day of April, 1973.

/s/ Barbara H. Guth
Notary Public

White Affidavit Exhibit A
CA 626-73

ENLISTMENT CONTRACT - ARMED FORCES OF THE UNITED STATES

(Also to be used by APEES in conjunction with induction processing as a means of providing data for manpower information reporting systems.)

Form Approved Budget Bureau No. 22-R0015

FILED
APR 23 1973
JAMES F. DAVEY, Clerk

1. SERVICE NO.	2. HIGHEST SCHOOL GRADE COMPLETED	3. RATE/GRADE	4. BRANCH/CLASS AND COMPONENT	5. LAST NAME - FIRST NAME - MIDDLE NAME
BGS 05 39	12	AR E3	USN	WHITE, LAWRENCE EDWIN

6. DATE OF ENL/INDUC	7. TERM OF ENLISTMENT/INDUC	8a. MARITAL STATUS	8b. NO. DEPEND	9. NAME & LOCATION OF ACTIVITY EFFECTING ENLISTMENT/REENLISTMENT/INDUCTION
03 13 69	4 YEARS ☐ MINORITY	C-0		AFEES, DENVER, COLO.

10. AFQT SCORE	11. ENLISTED/REENLISTED/INDUCTED	12. AUTHORITY FOR ENLISTMENT/REENLISTMENT/INDUC
C87	☐ 1ST ENLIST ☐ REENL. ☐ INDUCTION	MANDATORY AMS, 2 2003

13. TERM OF ACDU (Reserve only)	14. ACTIVE/INACTIVE STATUS (Reserve only)	15. ACCEPTED
00 MONTHS	☐ RETAINED ON AD ☐ HONED AD (w/in 24 hrs) ☐ INACTIVE DUTY	DENVER, COLO.

16. DATE MIL OBLI INC	17. PMOS/AFS CODE/MOD	18. RELIGION	19. SSAN	20. CONTRACT DUTY LIMITATIONS
03 13 69	A	BAPTIST	523 68 3987	NA

21. DATE OF BIRTH	22. CITIZENSHIP	23. PLACE OF BIRTH (City, state or country)
03 01 49	☒ US ☐ NAT US ☐ COUNTRY (Specify)	DENVER, COLO.

24. DATE OF TRANSFER	25. PHYSICAL PROFILE	26.	27. TRANSFER TO (Activity and location)	28.
03 13 69	A	652544	CO, USNTC, SAN DIEGO, CALIF.	82

29. DATE LAST DC/RAD	30. SVC FROM WHICH LAST DISCHARGED	31.	32.	33. TYPE OF LAST DISCHARGE	34.
00 00 00	NA	99		NA	0

35. DATE OF RATE/GR	36. SELECTIVE SERVICE NO.	37. RATE/GR APT/PAPT	38. SELECTIVE SERVICE LOCAL BD (Bd No., city & state)
NA	5 16 49 214	NA	16, PUEBLO, COLO.

39. 8 ASD/ADBD,	40. TOTAL ACTIVE FEDERAL SERVICE	41. HOME OF RECORD
03 13 69	00 YEARS 00 MONTHS 00 DAYS	DENVER, ADAMS, COLO.

42. 6P ED/PEDD	43. TOTAL INACTIVE FEDERAL SERVICE	44. MENTAL TEST SCORES
03 13 69	NA YEARS ____ MONTHS ____ DAYS	NA

45. SEX	46. RACE	47. DATA PROCESSING CODE
M	CAU	11 11 0 00 7 0 606 05 N 01 3 02 0 000000

48.
NA

49. PRIOR SERVICE

BRANCH & CLASS/ ARMED FORCE & COMPONENT	SERVICE NUMBER	DATE ENL. IND. APT. AND/OR OAD	DATE OF DISCHARGE OR RELEASE	GRADE/ RATE OR RANK	TYPE OF DISCHARGE	REASON FOR DISCHARGE	TIME LOST (No. Days)

50. I know that if I secure my enlistment by means of any false statement, willful misrepresentation or concealment as to my qualifications for enlistment, I am liable to trial by court martial or discharge for fraudulent enlistment and that, if rejected because of any disqualification known and concealed by me, I will not be furnished return transportation to place of acceptance.

I am of the legal age to enlist. I have never deserted from and I am not a member of the Armed Forces of the United States, the US Coast Guard, or any reserve component thereof; I have never been discharged from the Armed Forces or any type of civilian employment in the United States or any other country on account of disability or character unfitness of other civilian or military court unless so indicated by me in Item 49, "Remarks" of this contract. I am not now drawing retired pay, a pension, disability allowance, or disability compensation from the government of the United States.

51. SECTION 6538 OF TITLE 10 OF THE UNITED STATES CODE is quoted: "(a) The Secretary of the Navy may extend enlistments in the Regular Navy and the Regular Marine Corps in time of war or in time of national emergency declared by the President for such period as he considers necessary in the public interest. Each member whose enlistment is extended under this section shall be discharged not later than six months after the end of the war or national emergency, unless he voluntarily extends his enlistment. (b) The substance of this section shall be included in the enlistment contract of each person enlisting in the Regular Navy or Regular Marine Corps."

52. SECTION 6539 OF TITLE 10 OF THE UNITED STATES CODE is quoted: "(a) The senior officer present afloat in foreign waters shall send to the United States by Government or other transportation as soon as the military situation permits the part of the naval service who is serving on a vessel or in a unit of which he has command and who desires to return to the United States. However, when the senior officer present afloat considers it to be in the public interest, he may withhold a number of persons entitled to transportation under this section. (b) Each member withheld under subsection (a)—(1) shall be discharged not later than 60 days after his arrival in the United States and (2) except in time of war is entitled to an increase in basic pay of 25 percent. (c) The substance of this section shall be included in the enlistment contracts of each person enlisting in the naval service."

53. I understand that unless enlistment is in a Reserve component of any of the Armed Forces of the United States, or upon transfer or assignment thereto, in time of war or [illegible] declared by Congress, or when otherwise authorized by law, I may be ordered to active duty for the duration of the war or [illegible] emergency and for the [illegible] thereafter, or such other period authorized by law.

54. I have had this contract fully explained to me, I understand it, and certify that no promise of any kind has been made to me concerning assignment to duty, proficiency pay, schooling, special programs, assignment of government quarters, or transportation of dependents except as shown

8

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DD FORM 4, 1 APR 66 REPLACES DD FORM 4 1 AUG 54, WHICH IS OBSOLETE.

BEST COPY AVAILABLE

I, [illegible] enter (or affirm) that the foregoing statements have been read to me, that my statements have been correctly recorded and are true in all respects and that I fully understand the conditions under which I am enlisting.

SIGNATURE OF WITNESS	SIGNATURE OF APPLICANT *(First Name - Middle Name - Last Name)*
[illegible]	[illegible]

56. REMARKS

57. OATH OF ENLISTMENT *(For service in Regular or Reserve Component of the Armed Forces except National Guard or Air National Guard)*

I, [illegible] *(First Name - Middle Name - Last Name)*, do hereby acknowledge to have voluntarily enlisted under the conditions prescribed by law, this 25TH day of MARCH, 19 69, in the U. S. NAVY for a period of FOUR years unless sooner discharged by proper authority; and I do solemnly swear *(or affirm)* that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations, and the Uniform Code of Military Justice. So help me God.

SIGNATURE [illegible]

58. OATH OF ENLISTMENT *(For service in National Guard or Air National Guard)*

I do hereby acknowledge to have voluntarily enlisted this _____ day of _____, 19____, in the *(Army) (Air)* National Guard of the State of _____ and as a Reserve of the *(Army) (Air Force)* with membership in the *(Army National Guard of the United States) (Air National Guard of the United States)* for a period of _____ *(Years - Months - Days)* under the conditions prescribed by law, unless sooner discharged by proper authority.

I, _____ *(First Name - Middle Name - Last Name)*, do solemnly swear *(or affirm)* that I will support and defend the Constitution of the United States and of the State of _____ against all enemies, foreign and domestic; that I will bear true faith and allegiance to them; and that I will obey the orders of the President of the United States and the Governor of _____ and the orders of the officers appointed over me, according to law, regulations, and the Uniform Code of Military Justice. So help me God.

SIGNATURE

59. CONFIRMATION OF ENLISTMENT

The above oath was subscribed and duly sworn to before me this 25TH day of MARCH, 19 69

To the best of my judgement and belief, enlistee fulfills all legal requirements, and in enlisting this applicant, I have strictly observed the regulations governing such enlistment. The above oath, as filled in, was read to the applicant prior to subscribing thereto.

TYPED NAME, GRADE/RANK, AND ORGANIZATION OF ENLISTING OFFICER	SIGNATURE OF ENLISTING OFFICER
D. C. ANDERSON, CPT, USAF	[illegible]

White Affidavit Exhibit B

CA 626 - 23

FORM APPROVED BY COMPTROLLER GENERAL U.S. 25 MARCH 1953

SHIP OR STATION: U.S.NAVAL SCHOOLS COMMAND, TREASURE ISLAND, SAN FRANCISCO, CALIFORNIA (Name) (Service No. s/w) (Rate) LOCATION

FILED

APR 23 1973

JAMES F. DAVEY, Clerk

I LAWRENCE EDWIN WHITE B65 03 39 SRHSEF USN having been enlisted in the Navy of the United States on 13 MAR 69 for FOUR years, in consideration of the pay, allowances and benefits which are accruing to me during the continuances of my service voluntarily agree to extend my enlistment as authorized by Section 5539 of Title 10, United States Code, and the regulations issued pursuant thereto. I voluntarily agree to extend my enlistment for a period of TWO years from the date of expiration thereof, subject to the provisions, limitations of my said contract of enlistment of which this my voluntary agreement shall form a part.

REASON FOR EXTENSION: Training (Advanced Electronics Field (AEF) Program-BUPERS ltr Pers B2131-gn-56 of 31 AUG 66). I understand that this extension agreement becomes binding upon execution and thereafter may not be cancelled except as set forth in BUPERS Article C-1407.

I understand that when a war or national emergency is declared by Congress or a national emergency is declared by the President, my enlistment as extended by this agreement, may be further extended until 6 months after the end of such war or national emergency, unless I voluntarily re-enlist or re-extend my enlistment, and that when my enlistment is so extended that provisions of Section 5540, Title 10, United States Code, which authorized an increase of basic pay of 25 percent, is inapplicable, and further I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God.

SIGNATURE Lawrence Edwin White

SUBSCRIBED and sworn to before me this 23rd day of JULY 1969 and this contract is hereby perfected and accepted for and on behalf of the United States. Service thereunder to begin from the date following the date the original contract of enlistment would have expired had it not been extended. This is the FIRST extension of current enlistment.

SIGNATURE (See Art. 1-23(3), BuPers Manual) J. M. SJOBERG, C.T.02, USN, HD, ENLPERS BRANCH, BY DIRECTION OF THE C.O. | RANK AND TITLE

EXAMINED AND FOUND PHYSICALLY QUALIFIED FOR EXTENSION OF ENLISTMENT (Examination to be held just prior to expiration of enlistment)

DATE SHIP OR STATION

SIGNATURE OF MEDICAL OFFICER | RANK AND TITLE

ORDER TO CREDIT MILEAGE ALLOWANCE, REENLISTMENT BONUS, LUMP SUM LEAVE PAYMENT AND OTHER ALLOWANCES AS PROVIDED BY LAW AND REGULATIONS

THE ENLISTMENT DESCRIBED ABOVE, HAS BEEN COMPLETED THIS DATE

AND TOMORROW THE EXTENSION THEREOF FOR (Words) (Figures) YEARS WILL BECOME EFFECTIVE.

☐ ELECTED CASH SETTLEMENT (Words) (Figures) DAYS UNUSED LEAVE

NET TIME SERVED IN THIS ENLISTMENT (Yrs.) (Mos.) (Days) | AT MIDNIGHT THIS DATE, ON DUTY AT (Place)

☐ ENTER CHECKAGE FOR DAYS EXCESS LEAVE

FROM TO

OTHERWISE ENTITLED TO (Type of Discharge) | IF AT SEA, NEXT PORT REACHED

☐ ELECTED TO CARRY OVER UNUSED LEAVE

☐ I HEREBY ELECT TO RECEIVE REENLISTMENT BONUS UNDER PROVISIONS OF SEC. 204, CAREER COMPENSATION ACT OF 1949 SIGNATURE

☐ I HEREBY ELECT MILEAGE ALLOWANCE TO (LOCATION)

PLACE OF (SEE TRAVEL INSTRUCTIONS)

TOTAL ACTIVE FEDERAL SERVICE (At Midnight this date) (Yrs.) (Mos.) (Days)	REENLISTMENT OR EXTENSION ENTERED INTO BY OR AFTER 1 OCTOBER 1949, FOR WHICH A BONUS/ALLOWANCE WAS PAYABLE	(Number)	TOTAL OF PREVIOUS RE-ENLISTMENT BONUSES AND TOTAL BONUS RECEIVED	AMOUNT $
☐ HOME ADDRESS AT TIME OF ENLISTMENT, VERIFIED	THE DISBURSING OFFICER IS AUTHORIZED AND DIRECTED TO CREDIT, AS PROVIDED BY LAW AND REGULATIONS, MILEAGE AND RE-ENLISTMENT BONUS AS SHOWN.	MILEAGE ALLOWANCE $	REENLISTMENT BONUS $	

MISCELLANEOUS

C.O. ORDER NO. | D.O. SYMBOL NO. | SIGNATURE (See Art. 1-23(3), BuPers Manual) | RANK AND TITLE

NAME (Last, First, Middle)	SERVICE NO.	RATE	BRANCH AND CLASS
WHITE, LAWRENCE EDWIN	B65 03 39	SRHSEF	USN

AGREEMENT TO EXTEND ENLISTMENT NAVPERS 601-1/REVISED JAN (Rev. 5-66)

25

FORM APPROVED BY COMPTROLLER GENERAL U.S. 29 MARCH 1958

White Affidavit Exhibit C CA 626-73

SHIP OR STATION | LOCATION

U.S. NAVAL SCHOOLS COMMAND, TREASURE ISLAND, SAN FRANCISCO, CALIFORNIA
(Name) (Service Number) (Rate)

I LAWRENCE EDWIN WHITE B65 03 39 SRHSEF USN having enlisted in the Navy of the United States on 13 MAR 69 for FOUR years in consideration of the pay, allowances, and benefits which will accrue to me during the continuances of my service voluntarily agree to extend my enlistment as authorized by Section 5539 of Title 10, United States Code, and the regulations issued pursuant thereto. I voluntarily agree to extend my enlistment for a period of TWO years from the date of expiration thereof, subject to the provisions and obligations of my said contract of enlistment of which this my voluntary agreement shall form a part.

FILED
APR 23 1973
JAMES F. DAVEY

REASON FOR EXTENSION: Training (Advanced Electronics Field (AEF) Program SUPERS ltr Pers B2131-[illegible] 56 of 31 AUG 66). I understand that this extension agreement becomes binding upon execution and thereafter may not be cancelled except as set forth in BUPERS Article C-1407.

I understand that when a war or national emergency is declared by Congress, or a national emergency is declared by the President, my enlistment, as extended by this agreement, may be further extended until 6 months after the end of such war or national emergency, unless I voluntarily re-enlist or re-extend my enlistment, and that when my enlistment is so extended that provisions of Section 5540, Title 10, United States Code, which authorized an increase of basic pay of 25 percent, is inapplicable, and further I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God.

SIGNATURE Lawrence Edwin White

SUBSCRIBED and sworn to before me this 23rd day of JULY 1969 and this contract is hereby perfected and accepted for and on behalf of the United States. Service thereunder to begin from the date following the date the original contract of enlistment would have expired had it not been extended. This is the FIRST extension of current enlistment.

SIGNATURE (Last Name, First Name, Initial) | RANK AND TITLE

J. M. SOLBERG, CWO2, USN, ND, EMPERS BRANCH, BY DIRECTION OF THE C.O.

EXAMINED AND FOUND PHYSICALLY QUALIFIED FOR EXTENSION OF ENLISTMENT: (Examination to be held just prior to expiration of enlistment)

DATE | SHIP OR STATION

SIGNATURE OF MEDICAL OFFICER | RANK AND TITLE

ORDER TO CREDIT MILEAGE ALLOWANCE, REENLISTMENT BONUS, LUMP SUM LEAVE PAYMENT AND OTHER ALLOWANCES AS PROVIDED BY LAW AND REGULATIONS

THE ENLISTMENT DESCRIBED ABOVE, HAS BEEN COMPLETED THIS DATE 12 MARCH 1973 AND TOMORROW THE EXTENSION THEREOF FOR 02 YEARS WILL BECOME EFFECTIVE.

☐ ELECTED CASH SETTLEMENT

(Words) (Figures) DAYS UNUSED LEAVE

NET TIME SERVED IN THIS ENLISTMENT (Yrs.) (Mos.) (Days): 04 00 00

AT MIDNIGHT THIS DATE, ON DUTY AT (Place): WASHINGTON, D.C.

☒ ENTER CHECKAGE FOR 09 DAYS UNUSED LEAVE FROM 11 FEB 73 TO 19 FEB 73

OTHERWISE ENTITLED TO (Type of Discharge): HONORABLE

IF AT SEA, NEXT PORT REACHED

☐ ELECTED TO CARRY OVER UNUSED LEAVE

☐ I HEREBY ELECT TO RECEIVE REENLISTMENT BONUS UNDER PROVISIONS OF SEC. 208, CAREER COMPENSATION ACT OF 1949

☒ I HEREBY ELECT MILEAGE ALLOWANCE TO (LOCATION) WESTMINSTER, COLORADO

PLACE OF (SEE TRAVEL INSTRUCTIONS) ACCEPTANCE

SIGNATURE: LAWRENCE EDWIN WHITE

TOTAL ACTIVE FEDERAL SERVICE (As Midnight this Date) (Yrs.) (Mos.) (Days): 04 00 00

REENLISTMENT OR EXTENSIONS ENTERED INTO ON OR AFTER 1 OCTOBER 1949, FOR WHICH A BONUS/ALLOWANCE WAS PAYABLE.

(Number): N/A

TOTAL OF PREVIOUS RE-ENLISTMENT BONUSES LESS TOTAL BONUS RECOUPMENTS | AMOUNT $

☒ HOME ADDRESS AT TIME OF ENLISTMENT, VERIFIED

THE DISBURSING OFFICER IS AUTHORIZED AND DIRECTED TO CREDIT, AS PROVIDED BY LAW AND REGULATIONS, MILEAGE AND RE-ENLISTMENT BONUS AS SHOWN.

MILEAGE ALLOWANCE $ | REENLISTMENT BONUS $

MISCELLANEOUS

PEBD: 13 MAR 69 RATE: CTM3

C.O. ORDER NO.: 0902-73 | D.O. SYMBOL NO. | SIGNATURE (Ex. Art. 1-2-3, Uniform Manual): V. MORALES | RANK AND TITLE: LT, PERSONNEL OFFICER

NAME (Last, First, Middle): WHITE, LAWRENCE EDWIN | SERVICE NO.: B65 03 39 | RATE: SRHSEF | BRANCH AND CLASS: USN

AGREEMENT TO EXTEND ENLISTMENT NAVPERS 901-1A/NAVCOMPT 313 (Rev. 6-63)

PART 1 - FORWARD TO SUPERS UNDER EXTENSION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 626-73

NICHOLAS J. LARIONOFF, JR., ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, ET AL., DEFENDANTS

ANSWER

Come now the defendants, by their attorney, the United States Attorney for the District of Columbia, and in answer to plaintiffs' complaint, respectfully show to the Court as follows, to wit:

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

The Court Lacks jurisdiction over the subject-matter of this action.

Third Defense

Plaintiffs have failed to exhaust available administrative remedies.

Fourth Defense

This action is an unconsented suit which is barred by the doctrine of sovereign immunity.

Fifth Defense

This action may not properly be maintained as a class action.

Sixth Defene

Answering specifically the numbered paragraphs of the complaint, defendants admit, deny and aver as follows:

1. No answer required.

2. Subparagraphs A and B of paragraph 2 of the complaint are admitted, except that defendant Elliot L. Richardson is no longer Secretary of Defense. No answer is required to subparagraph C, which is a conclusion of law.

3. Denied, except that defendants aver that plaintiffs enlisted in the United States Navy at divers times and places for periods of four years, and at divers times and places signed agreements to extend their said enlistments for two years, in consideration of receiving advanced training, and that all plaintiffs received said advanced training.

4. Denied.

5.-6. No answer required.

7.-10. Denied.

11. Admitted.

12. Denied. Defendants aver that plaintiffs executed agreements to extend their enlistments at various times and places prior to July 1, 1972.

13. No answer is required to the conclusions of law contained in paragraph 13 of the complaint.

14. Denied.

Defendants deny each and every allegation of the complaint not specifically admitted, denied or qualified hereinabove.

HAROLD H. TITUS, JR.
United States Attorney

ARNOLD T. AIKENS
Assistant United States Attorney

MICHAEL A. KATZ
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing Answer has been made upon plaintiff by mailing a copy thereof to Stephen Daniel Keeffe, Esq., 733 15th Street, N.W., Washington, D.C. 20005, on this 18 day of June, 1973.

MICHAEL A. KATZ
Assistant United States Attorney
U.S. District Courthouse
Room 3433
426-7381

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 626-73

NICHOLAS J. LARIONOFF, JR., ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, ET AL., DEFENDANTS

STATEMENT OF MATERIAL FACTS PURSUANT TO LOCAL RULE 9(h)

Pursuant to Local Rule 9(h), defendants submit the following as and for their Statement of Material Facts as to which they contend that no genuine issue exists herein, in support of their alternative motion for summary judgment:

1. From April 20, 1966 until July 1, 1972, a variable reenlistment bonus with a multiple of four (4) was payable to naval enlisted personnel holding the rating of Communications Technician (Maintenance) ("CTM") who re-enlisted or extended their current enlistment effective during that period and who met the requirements for payment of the bonus set forth in applicable directives. (Def. Exhs. C and D, enclosure 2)

2. Effective July 1, 1972, payment of a variable reenlistment bonus to persons re-enlisting in the CTM rating on or after that date was discontinued. (Def. Exh. D, encls. 1 and 2)

3. On January 3, 1969, plaintiff Paul Eugene Boudreau enlisted in the United States Navy at the Armed Forces Examining and Entrance Station (AFEES), Boston, Massachussets, for four years. (Service record, enlisted contract, DD Form 4) Plaintiff Boudreau was thereupon assigned to the Naval Training Center, Great Lakes, Illinois where on January 31, 1969, he entered the Advanced Electronics Field program and executed an "Agreement to Extend Enlistment" (NAVPERS

Form 601-1A) which recites in pertinent part as follows: *

> "I PAUL EUGENE BOUDREAU, B14 48 07, SRHEF, USN having enlisted in the Navy of the United States on 3 JAN 69 for FOUR years, in consideration of the pay, allowances, and benefits which will accrue to me during the continuance of my service, voluntarily agree to extend my enlistment, as authorized by section 5539 of Title 10, United States Code, and the regulations issued pursuant thereto. I voluntarily agree to extend my enlistment for a period of TWO years from the date of expiration thereof, subject to the provisions and obligations of my said contract of enlistment of which this, my voluntary agreement, shall form a part.
>
> "REASON FOR EXTENSION: 'Training (Advanced Electronics Field (AEF) Program-BuPers ltr Pers-B2131-gn-56 of 31 August 1966). I understand this extension agreement becomes binding upon execution and thereafter may not be cancelled except as set forth in BUPERS Manual, Article C-1407.'"

Plaintiff Boudreau's enlistment contract, of which the above forms a part, contains the following recital (Item 54, DD Form 4)

> "I have had this contract fully explained to me, I understand it, and certify that no promise of any kind has been made to me concerning assignment to duty, geographical area, schooling, *special programs*, assignment of government quarters, or transportation of dependents except as indicated on NAVPERS 601-13-2." [emphasis added]

---

* Pertinent documents in each plaintiff's service record (Def. Exhs. G - M) are marked with tabs)

On the same date, he executed another document reciting in pertinent part that:

> "I fully understand that, by virtue of having been enlisted in the U.S. Navy as a SR I am guaranteed assignment to either one of a group of service schools or to duty in a specific apprenticeship field upon successful completion of recruit training. I desire to waive my rights guaranteed by my enlistment contract, and I hereby request that my rate be changed in equal pay grade to SRHEF. This change of rate is requested for the purpose of:
>
> "Assignment to the advanced electronics field program. The provisions of this program, the category to which my rate will be changed and the six (06) years service obligation have been fully explained to me." [emphasis added]
>
> (Administrative remarks, January 31, 1969)

Plaintiff Boudreau received training in the advanced Electronics Field between on or about March 12, 1969 and on or about April 30, 1970, and received a CTM rating on January 16, 1970. His service record nowhere reflects any promise or agreement to pay him a variable reenlistment bonus on the effective date of his aforesaid agreement to extension of his enlistment, or at any other time. The said extension agreement became effective on January 3, 1973.

4. On September 3, 1969, plaintiff Thomas Walter Dietz enlisted in the United States Navy at the AFEES, Fargo, North Dakota, for four years. At the same time and place, plaintiff Dietz entered the Advanced Electronics Field program and acknowledged the six year service obligation entailed, and on September 26, 1969, at the Naval Training Center, San Diego, California, executed an Agreement to Extend Enlistment for an additional two years, for the same purposes, and containing the same recitals, as the agreement quoted in paragraph 3 hereinabove. Plaintiff Dietz received training in the advanced electronics field between on or about November

10, 1969 and on or about December 18, 1970, and received a CTM rating on April 17, 1970. His service record nowhere reflects any promise or agreement to pay him a variable reenlistment bonus on the effective date of his aforesaid agreement to extension of his enlistment or at any other time. The said extension agreement will become effective on or about September 3, 1973.

5. On August 28, 1970, plaintiff Johnnie Scott Johnson enlisted in the United States Navy at the AFEES, Los Angeles, California, for four years. At the same time and place, plaintiff Johnson entered the Advanced Electronics Field program, acknowledged the six year service obligation entailed, and executed an Agreement to Extend Enlistment for an additional two years, for the same purposes, and containing the same recitals, as the agreement quoted in paragraph 3 hereinabove. Plaintiff Johnson received training in the advanced electronics field between on or about November 24, 1970 and on or about August 10, 1971, and received a CTM rating. His service record nowhere reflects any promise or agreement to pay him a variable reenlistment bonus on the effective date of his aforesaid agreement to extension of his enlistment, or at any other time. The said extension agreement will become effective on or about August 28, 1974.

6. On June 23, 1969, plaintiff Nicholas John Larionoff, Jr. enlisted in the United States Navy on June 23, 1969 at the AFEES, Newark, New Jersey, for four years. Plaintiff Larionoff was thereupon assigned to the Naval Training Center, Great Lakes, Illinois, where on July 9, 1969, he entered the Advanced Electronics Field program and executed an Agreement to Extend Enlistment for an additional two years, and administrative remarks, for the same purposes, and containing the same recitals, as the agreement and administrative remarks quoted in paragraph 3 hereinabove. Plaintiff Larionoff received training in the advanced electronics field between on or about August 29, 1969 and on or about July 17, 1970, and received a CTM rating on March 9, 1970. His serv-

ice record nowhere reflects any promise or agreement to pay him a variable reenlistment bonus on the effective date of his aforesaid agreement to extension of his enlistment, or at any other time. The said extension agreement will become effective on or about June 23, 1973.

7. On October 1, 1968, plaintiff John Clay Smith enlisted in the United States Navy at the AFEES, Detroit, Michigan for four years. Plaintiff Smith was thereupon assigned to the Naval Training Center, Great Lakes, Illinois, where on October 15, 1968, he entered the Advanced Electronics Field program and executed an Agreement to Extend Enlistment for an additional two years and administrative remarks, for the same purposes, and containing the same recitals, as the agreement and administrative remarks quoted in paragraph 3 hereinabove. Plaintiff Smith received training in the advanced electronics field program between on or about November 29, 1968 and on or about December 12, 1969 and received a CTM rating on July 16, 1969. His service record nowhere reflects any promise or agreement to pay him a variable reenlistment bonus on the effective date of his aforesaid agreement to extension of his enlistment, or at any other time. The said extension agreement became effective on October 1, 1972.

8. On March 28, 1969, plaintiff Joseph Roy Tomiano enlisted in the United States Navy at the AFEES, Pittsburgh, Pennsylvania, for four years. At the same time and place, plaintiff Tomiano entered the Advanced Electronics Field program, and acknowledged the six year service obligation entailed, and on April 14, 1969, at the Naval Training Center, Great Lakes, Illinois, executed an Agreement to Extend Enlistment for an additional two years, for the same purposes, and containing the same recitals, as the agreement quoted in paragraph 3 hereinabove. Plaintiff Tomiano received training in the advanced electronics field between on or about May 29, 1969 and on or about March 27, 1970, and received a CTM rating on the latter date. His service record nowhere reflects any promise or agreement to pay him a variable reenlistment bonus on the effective date of his aforesaid agreement to extension of his enlistment, or

at any other time. The said extension agreement became effective on March 28, 1973.

9. On March 13, 1969, plaintiff Lawrence Edwin White enlisted in the United States Navy at the AFEES, Denver, Colorado, for four years. Plaintiff White was thereupon assigned to the Naval Training Center, San Diego, California, where on April 1, 1969, he entered the Advanced Electronics Field program, and acknowledged the six year service obligation entailed, and on July 23, 1969 executed an Agreement to Extend Enlistment for an additional two years for the same purposes, and containing the same recitals, as the agreement quoted in paragraph 3 hereinabove. Plaintiff White received training in the advanced electronics field between on or about May 29, 1969 and on or about March 3, 1970, and received a CTM rating on January 28, 1970. His service record nowhere reflects any promise or agreement to pay him a variable reenlistment bonus on the effective date of his aforesaid agreement to extension of enlistment, or at any other time. The said extension agreement became effective on March 13, 1973.

10. None of the plaintiffs has made application for correction of records to the Board for Correction of Naval Records with respect to the matters complained of in this action. (Affidavit, Def. Exh. O).

HAROLD H. TITUS, JR.
United States Attorney

ARNOLD T. AIKENS
Assistant United States Attorney

MICHAEL A. KATZ
Assistant United States Attorney

EXHIBIT A

September 3, 1970
NUMBER 1304.14

[SEAL]

ASD(M&RA)

DEPARTMENT OF DEFENSE DIRECTIVE

SUBJECT Award of Variable Reenlistment Bonus and Proficiency Pay for Enlisted Personnel

Refs: (a) Section 308 of Title 37, United States Code
(b) Section 307 of Title 37, United States Code
(c) DoD Instruction 1304.15, "Administration of Variable Reenlistment Bonus and Proficiency Pay Programs," September 3, 1970
(d) DoD Directive 1304.10, Subject as above, August 15, 1968 (hereby cancelled, see Section II.)

I. PURPOSE AND APPLICABILITY

This Directive prescribes the policies for award of the Variable Reenlistment Bonus, established by subsection (g) of reference (a), and Proficiency Pay, established by reference (b), to enlisted members of the Military Departments. The provisions of this Directive apply to the Military Departments. Detailed instructions on the administration of these awards are contained in reference (c).

II. CANCELLATION

Reference (d) is cancelled effective July 1, 1971.

III. DEFINITIONS

A. *Military Skill.* An element of the enlisted classification structure (MOS, AFS, Rating, NEC, Special Duty Identifier, Career Field Subdi-

vision, Career Management Field, Occupational Field, etc., as appropriate to the Military Service concerned) that identifies a group of closely related positions on the basis of the similarity of the duties involved. It identifies the individuals who have the ability, knowledge, and other occupational qualifications required for effective performance in such positions.

B. *Military Specialty.* A category of military skill as a primary identifier for qualified individuals. A military specialty (1) provides occupational standards for procurement, training, classification, assignment, and career development; (2) identifies military skills possessing such a close relationship that a degree of interchangeability exists between persons assigned to the military specialty; and (3) provides a normal career progression pattern for individuals within that military skill.

C. *Special Duty.* A category of military skill used only as a secondary or additional identifier for qualified individuals performing an actual group of tasks on a temporary or semi-permanent duty basis. These duties are unrelated to any specific military specialty and are neither designed nor intended for a normal career progression pattern. Individuals are awarded a special duty identifier only for the purpose of assignment to a specific special duty position.

D. *Variable Reenlistment Bonus.* A bonus (not to exceed four times the bonus payable under subsection (a) of reference (a)) that may be awarded in addition to any pay and allowances to which a member is otherwise entitled to an enlisted member who reenlists in a designated military specialty.

E. *Shortage Specialty (Proficiency Pay).* A monthly amount of pay in addition to any pay and allowances to which he is otherwise en-

titled that may be awarded to an eligible enlisted member in a designated military specialty.

F. *Special Duty Assignment (Proficiency Pay).* A monthly amount of pay in addition to any pay and allowances to which he is otherwise entitled that may be awarded to an eligible enlisted member in a designated special duty assignment.

G. *Superior Performance (Proficiency Pay).* A monthly amount of pay in addition to any pay and allowances to which he is otherwise entitled that may be awarded to an eligible enlisted member who is determined to be a superior performer.

H. *Continuous Active Service.* Active federal military service, exclusive of active duty for training, without a break in service for more than 90 days.

I. *Career Personnel.* Personnel on second or subsequent terms of active duty enlisted service and first term personnel who are serving in an enlistment, as extended, or an extension of enlistment that will total six or more years of active service.

J. *Career Requirements.* Career requirements in a military specialty will be those determined by each Military Service, and approved by the Secretary of Defense, as a result of a detailed study of career content goals conducted under guidelines approved by the Assistant Secretary of Defense (Manpower and Reserve Affairs).

1. In the interim, career requirements in a military specialty are the number of positions in the military specialty authorized in pay grades E-5 and above unless the Assistant Secretary of Defense (Manpower and Reserve Affairs) shall approve an alternate interim procedure.
2. While this interim provision is in effect, the sum of career requirements in all military specialties will not exceed the end strength approved by the Secretary of Defense, either in pay grades E-5 and above or in such other interim specification of career requirements by pay grade as may be aproved by the Assistant Secretary of Defense (Manpower and Reserve Affairs).

K. *Career Manning Level.* A quantitative index, expressed as a percentage, that measures the extent to which the inventory of qualified career personnel in a military specialty meets career requirements in the military specialty. Specifically, the ratio of the number of career personnel in a military specialty to the career requirements in that military specialty, multiplied by 100 to convert the ratio to a percentage.

L. *Training Investment.* A quantitative index based on the length and cost of formal school training required to qualify first term personnel in a military specialty. The index for a military specialty establishes its relative position in an array of all military specialties in the Military Service concerned, with the military specialty requiring the longest and most costly training having the highest index.

M. *Volunteer.* An enlisted member who on his own volition indicates in writing (Request for Personnel Action, Assignment Preference Statement, etc.) through appropriate channels to the headquarters having approval authority a desire for duty in a billet or position identified as a special duty assignment.

N. *Qualified Volunteer.* A volunteer who has passed the screening process and has completed the specialized training required for award of the special duty identifier.

O. *Volunteer Manning Level.* A quantitative index, expressed as a percentage, that measures the extent to which the inventory of qualified volunteers in a special duty assignment meets

total manning requirements in the special duty assignment. Specifically, the ratio of the number of qualified volunteers in a special duty assignment to the total manning requirements in that special duty assignment, multiplied by 100 to convert the ratio to a percentage.

IV. OBJECTIVES AND POLICIES

A. *General*

1. The Variable Reenlistment Bonus and Shortage Specialty (Proficiency Pay) are designed to assist the Department of Defense in attaining and sustaining adequate career manning levels in designated military specialities. The major source of additional career personnel is the additional first term reenlistment that can be obtained by award of these extra pays. Other sources are extra career reenlistments and career personnel in other military specialties who may be induced to qualify for, enter into, and continue to serve in the designated military specialties.
2. Special Duty Assignment (Proficiency Pay) is designed to assist in attaining and sustaining an adequate volunteer manning level in designated critical special duty assignment.
3. Superior Performance (Proficiency Pay) is designed to encourage and reward superior duty performance in those military skills not designated for award of Shortage Specialty (Proficiency Pay) or Special Duty Assignment (Proficiency Pay).

B. *Authority to Designate Military Skills*

1. *Designated Military Specialties.* Subject to review and prior approval by the Secretary of Defense, the Secretary of a Military Department may designate a military specialty for award of the Variable Reenlistment Bonus, Shortage Specialty (Proficiency Pay) or a combination of both these awards in accordance with the criteria specified in subsection D, below.
2. *Designated Special Duty Assignments.* Subject to review and prior approval by the Secretary of Defense, the Secretary of a Military Department may designate a military skill that does not qualify as a military specialty, but is nevertheless critical to the Military Service mission, for award of Special Duty Assignment (Proficiency Pay) in accordance with the criteria specified in subsection D. below.

C. *Incentive Awards*

1. *Variable Reenlistment Bonus.* The objective of the Variable Reenlistment Bonus is to increase the number of reenlistments of members qualified and serving in designated military specialities. Because of its superior effectiveness as a retention incentive, the Variable Reenlistment Bonus will be used as the principal monetary incentive method for attaining adequate career manning in designated military specialties.

2. Proficiency Pay

   a. The following categories of Proficiency Pay are designed to accomplish three different objectives:

      (1) Shortage Specialty (Proficiency Pay) is designed to assist in attaining and sustaining an adequate career inventory in designated military specialties. Its principal objective is to increase the number of first term and career reenlistments of members who are qualified and

serving in designated military specialties. A secondary objective is to induce career personnel in other military specialties to qualify for, enter into, and continue to serve in designated military specialties. Shortage Specialty (Proficiency Pay) will be reserved for use in attracting career personnel to military specialties where the Variable Reenlistment Bonus is determined to be an insufficient retention incentive and where there is determined to be a career manning shortage caused by inadequate retention over an extended period.

(2) Special Duty Assignment (Proficiency Pay) is designed to induce volunteers to qualify for and serve in designated special duty assignments.

(3) Superior Performance (Proficiency Pay) is designed to provide a monetary incentive for the superior performance of members serving in all mifitary skills not designated for award of Shortage Specialty (Proficiency Pay) or Special Duty Assignment (Proficiency Pay).

b. Members are entitled to only one (1) type of Proficiency Pay.

D. *Criteria*

1. *For Designation of Military Skills.* A military skill that meets all the criteria below may be designated by the Secretary of a Military Department, subject to review and prior approval by the Secretary of Defense, for the indicated award. The Assistant Secretary of Defense (Manpower and Reserve Affairs) will prescribe by separate Department of Defense Instruction, referenence (c), guidelines for implementing the general policy criteria stated below. These guidelines will serve as the normal standards for designation of military skills. They will govern in the absence of other considerations determined by the Assistant Secretary of Defense (Manpower and Reserve Affairs) to be overriding. Such considerations will be limited to those, such as the years of service distribution of the career inventory, relevant to the attainment of the general policy objectives outlined above. There is no intent that every military skill must meet exactly these criteria if other considerations relevant to achieving the policy objective justify an award.

a. *Criteria for Both Variable Reenlistment Bonus and Shortage Specialty (Proficiency Pay).* There must be a reasonable prospect of enough improvement in career manning in response to the award to justify its cost.

b. *Criteria for Variable Reenlistment Bonus.* The military specialty currently reflects, or in the absence of the retention incentive of the Variable Reenlistment Bonus, is projected to reflect by the end of the budget year a significant shortage in career manning, provided that:

(1) The significance of any particular shortage will be evaluated in light of the training investment required in the military specialty.

(2) Higher training investment specialties will require a smaller career manning shortage to meet the test of significance.

(3) A military specialty having a current or projected career inventory equal to or less than the sum of all approved requirements in pay grades E-6 and above plus one half (50%) of approved requirements in pay grade E-5 will normally qualify for the Variable Reenlistment Bonus regardless of the training investment involved.

c. *Criteria for Shortage Specialty (Proficiency Pay).* The military specialty currently reflects, or in the absence of the incentive effect of Shortage Specialty (Proficiency Pay), is projected to reflect by the end of the budget year and for at least two more years in the future a significant shortage in career manning, provided that:

(1) The career manning shortage is determined to be a result of inadequate levels of past and current first term and career reenlistment rates.
(2) The actual or projected retention improvement from award of the maximum Variable Reenlistment Bonus is determined to be insufficient to raise career manning to adequate levels.
(3) The significance of any career manning shortage will be evaluated in light of the training investment required in the military specialty, with higher training investment specialties requiring a smaller career manning shortage to meet the test of significance.
(4) A military specialty in the lowest quartile of the service training investment array must reflect a current or projected career inventory equal to or less than the sum of all approved requirements in pay grades E-7 and higher plus three quarters (75%) of approved requirements in pay grade E-6.

d. *Criteria for Special Duty Assignment (Proficiency Pay).* The special duty assignment currently reflects, or in the absence of the incentive effect of Special Duty Assignment (Proficiency Pay), is projected to reflect by the end of the budget year a significant shortage of volunteer manning provided that:

(1) The special duty assignment is not eligible for consideration for Shortage Specialty (Proficiency Pay) because it is not a military specialty as defined in subsection III. B. above.
(2) The respective Military Service demonstrates a need for all assignees in the special duty assignment to be volunteers.
(3) The special duty assignment is outside the member's normal career progression pattern and is not intended for a full career.
(4) The special duty assignment requires special qualifications that are met by screening and special schooling other than brief orientation training.
(5) There must be a reasonable prospect of enough improvement in the number of qualified volunteers in response to the award to justify its cost.
(6) Efforts to induce volunteers into the special duty assignment have

been determined to be insufficient to raise the requisite number of qualified volunteers to adequate levels. The Military Service will document what other efforts have been made to fulfill the demand for volunteers.

(7) No other special or incentive pay is authorized to induce volunteers into the military skill.

e. *Criteria for Superior Performance (Proficiency Pay)*

(1) Members serving in military skills not designated for payment of Shortage Specialty (Proficiency Pay) or Special Duty Assignment (Proficiency Pay) may be designated for award of Superior Performance (Proficiency Pay) under policies established by the Secretaries of the Military Departments. Such policies shall be subject to review and prior approval by the Secretary of Defense.

(2) Superior Performance (Proficiency Pay) will be paid on a competitive basis. Calculations of quotas will be based on the number of personnel eligible to compete for award of Superior Performance (Proficiency Pay). Individual eligibility criteria are prescribed in reference (c).

(a) The Department of the Army may designate up to 10 percent of their eligible support personnel and up to 20 percent of their eligible combat arms personnel for receipt of this pay.

(b) Upon prior approval of implementing policies and plans, Departments of the Navy and Air Force may designate up to 15 percent of their eligible personnel for receipt of this pay.

2. *Eligibility of Individuals.* Specific provisions for individual eligibility of enlisted members for receipt of awards shall be as prescribed by reference (c).

E. *Amount and Method of Payments*

1. *Amount of Payments.* The amount of payments for the Variable Reenlistment Bonus shall not exceed four times the amount of the Regular Reenlistment Bonus (reference (a)). The amount of Proficiency Pay shall not exceed the maximum applicable rate prescribed in the following table for the proficiency rating to which the member is assigned (reference (b)).

Proficiency Rating	Maximum Statutory Monthly Rate
P-1	$ 50
P-2	100
P-3	150

a. The multiples to be used in calculating the Variable Reenlistment Bonus and the monthly amount of Shortage Specialty (Proficiency Pay) for which a military specialty is designated will be contingent on four conditions: (1) the extent of the career manning shortage in the military specialty, (2) the training investment in the military specialty, (3) the career manning improvement to be expected from the award, and (4) any other special considerations relevant to the attainment of adequate career manning in the military specialty.

b. The monthly amount of Special Duty Assignment (Proficiency Pay) for which a special duty assignment is designated will be contingent on four conditions: (1) the extent of the volunteer manning shortage, (2) the total manning level in the special duty assignment, (3) the volunteer manning improvement to be expected from the award, and (4) any other special consideration relevant to the attainment of adequate volunteer manning in the special duty assignment.

c. Only one rate of Superior Performance (Proficiency Pay) may be used within a Military Service.

2. *Method of Payments*

a. The Variable Reenlistment Bonus shall be paid in equal yearly installments on the anniversary date of the reenlistment except that in meritorious cases the bonus may be paid in fewer installments if the Secretary of the Military Department concerned determines such a procedure to be in the best interest of the members. The legislative history of subsection (g) of reference (a) makes clear the intent of the Congress that meritorious cases are to be interpreted liberally.

b. Proficiency Pay awards shall be paid monthly.

F. *Reduction and Termination of Awards.* When military skill is designated for reduction or termination of award an effective date for reduction or termination of awards shall be established and announced to the field at least 90 days in advance. All awards on or after that effective date in military skills designated

for reduction of award level will be at the level effective that date and no new awards will be made on or after the effective date in military skills designated for termination of awards.

1. *For Both Variable Reenlistment Bonus and Shortage Specialty (Proficiency Pay).* Secretaries of the Military Departments and the Assistant Secretary of Defense (Manpower and Reserve Affairs) will conduct an annual review of the retention and career manning situation in any military specialty that has attained or is projected to attain a career manning level of more than 105 percent.

a. If it no longer meets the criteria of subsection IV.D. above, it will be designated for either reduction or termination of award.

b. The review will consider the projected retention and career manning situations in the absence of the then current award so that a military specialty will not be designated for reduction or termination of award solely because the then current award has attained and is sustaining adequate retention and career manning in the military specialty.

2. *For Special Duty Assignment (Proficiency Pay).* Secretaries of the Military Departments and the Assistant Secretary of Defense (Manpower and Reserve Affairs) will conduct an annual review of special duty assignments that are designated for Special Duty Assignment (Proficiency Pay).

a. If the combination of total manning level and volunteer manning level do not meet the quantitative criteria in Table IV of reference (c) or the special duty assign-

ment no longer meets the criteria in subsection IV.D. above, it will be designated for either reduction or termination of award.

b. The review will consider the projected volunteer manning and total manning situations in the absence of the then current award so that a special duty assignment will not be designated for reduction or termination of award solely because the then current award has attained and is sustaining adequate volunteers in the special duty assignment.

3. *For Superior Performance (Proficiency Pay).* Payments to members receiving Superior Performance Pay (Proficiency Pay) will be terminated if their military skill is designated for payment of Shortage Specialty (Proficiency Pay) or Special Duty Assignment (Proficiency Pay).

G. *Recoupment of Variable Reenlistment Bonus Payments.* Recoupment of the amounts of Variable Reenlistment Bonus already paid in the case of a member who voluntarily or because of his misconduct fails to complete his enlistment period will be in accordance with DoD Directive 1304.4. Such members are not entitled to any remaining unpaid installments.

V. RESPONSIBILITIES

A. The Secretaries of the Military Departments will:

1. Designate military skills which meet the criteria outlined in section IV. above, subject to review and prior approval by the Secretary of Defense.
2. Administer the Variable Reenlistment Bonus and Proficiency Pay programs for the Military Services under their jurisdiction in accordance with the policies and procedures established in this Directive and reference (c).
3. Submit data for program review, analysis of military skill designations, and budget requests in accordance with the provisions of reference (c).
4. Recommended to the Assistant Secretary of Defense (Manpower and Reserve Affairs):
   a. Changes in the quantitative criteria for designation of military skills contained herein as appropriate to insure attainment of the policy objectives; and
   b. Exceptions to the quantitative criteria for designation of military skills contained herein when special considerations relevant to attainment of the policy objectives so indicate.
5. Conduct appropriate publicity campaigns to insure that all members are familiar with the individual eligibility criteria for award of these special pays. Special attention should be devoted to publicizing those special duty assignments that are authorized Special Duty Assignment (Proficiency Pay) to increase the number of personnel volunteering for assignments in these special duty assignments.

B. The Assistant Secretary of Defense (Manpower and Reserve Affairs) will:

1. Recommend to the Secretary of Defense specific policies to be included in annual program guidance on the Variable Reenlistment Bonus and Proficiency Pay programs.
2. Issue specific instructions for implementing the policies contained in this Directive, to include:
   a. Guidance for designation of military skills under provision of section IV. above;

b. Conditions of individual eligibility for awards (section IV. above); and,
c. Reporting requirements for review and evaluation of annual programs and individual requests for military skill designations.

3. Review and evaluate the Variable Reenlistment Bonus and Proficiency Pay programs of the Military Departments prior to implementation, make recommendations to the Secretary of Defense concerning measures required to attain the most effective use of these incentives, and monitor the performance of the programs to assure the efficient use of resources devoted to them.
4. Review annually the quantitative criteria for designation of military skills and make such revisions as may be required to assure attainment of the policy objectives specified herein.
5. Evaluate and make recommendations to the Secretary of Defense as appropriate on any requests for exceptions to the quantitative criteria for designation of military skills.

VI. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately for the development of plans, programs, and budgets, and shall be fully effective on July 1, 1971. Implementing regulations of the Military Services and all subsequent changes thereto will be submitted to the Secretary of Defense for review and approval prior to issuance. Six copies of approved regulations and changes will be submitted to the Assistant Secretary of Defense (Manpower and Reserve Affairs) within 60 days after approval of the regulation or change.

/s/ Melvin R. Laird
Secretary of Defense

EXHIBIT B

NUMBER 1304 15
DATE September 9, 1970

[SEAL]

DEPARTMENT OF DEFENSE INSTRUCTION

SUBJECT Administration of Variable Reenlistment Bonus and Proficiency Pay Programs

Refs: (a) DoD Directive 1304.14, "Policies for Award for Variable Reenlistment Bonus and Proficiency Pay for Enlisted Personnel of the Military Services," September 3, 1970
(b) DoD Instruction 1304.3, "Reenlistment Rate Reports," July 29, 1964
(c) DoD "Occupational Conversion Table, Enlisted," Current Issue, established by DoD Instruction 1312.1, December 23, 1968
(d) DoD Instruction 1304.13, Subject as above, August 15, 1968 (hereby cancelled, see Section II.)
(e) DoD Instruction 7730.24, "Statistical Reports on Proficiency Pay for Enlisted Personnel," May 27, 1964 (hereby cancelled, see Section II.)

I. PURPOSE

This Instruction implements the provisions of reference (a). It establishes: (a) quantitative criteria for designation of military skills for Variable Reenlistment Bonus, Proficiency Pay, or both; (b) individual eligibility criteria for receipt of Variable Reenlistment Bonus and Proficiency Pay; and (c) reporting requirements.

II. CANCELLATION

References (d) and (e) are cancelled effective July 1, 1971. Report Control Symbols DD-M(M)609,

DD-M(Q)610, and DD-M(A)889 are cancelled effective with reports as of 30 June 1971.

III. APPLICABILITY

The provisions of this Instruction apply to the Military Departments of the Army, Navy and Air Force.

IV. DEFINITIONS

A. Definitions in Section III., reference (a) apply.

B. *Variable Reenlistment Bonus Installment Payment.* A method of disbursing the Variable Reenlistment Bonus in two or more installment payments which, except in meritorious cases, will be equal annual installments. An *obligated* installment payment refers to the second or succeeding payment of the annual installment payment disbursed on the anniversary date of the reenlistment. An *accelerated* installment payment is one that is paid prior to the date the obligation for payment is due.

C. *Variable Reenlistment Bonus Lump Sum Payment.* A method of disbursing the entire Variable Reenlistment Bonus in a single payment at the time of reenlistment.

D. *Training Investment.* The quantitative measure of training investment for a military specialty as computed by the following formula:

$$T.I. = \frac{C_s \div \overline{C} + T_s \div \overline{T}}{2} \times 100$$

where: T.I. = training investment,

C_s = Training cost in the military specialty,

$\overline{C}$ = average training cost of all military specialties in the service,

T_s = training time in the military specialty, and

$\overline{T}$ = average training time of all military specialties in the service.

Because of different training policies and cost accounting procedures in the different Military Services, this measure should not be used for comparisons among Military Services.

V. CRITERIA

A. *For Designation of Military Skills.* The following quantitative criteria are established under the provisions of section V. of reference (a). These quantitative criteria will serve as the normal standards for designation of (1) military specialties for award of Variable Reenlistment Bonus and Shortage Specialty (Proficiency Pay) and (2) special duty assignments for Special Duty Assignment (Proficiency Pay). These criteria will govern in the absence of other overriding considerations (such as the years of service distribution of the career inventory compared to the years of service distribution of career requirements) that are clearly relevant to the attainment of the general policy objectives specified in section IV. of reference (a). The intent of this provision is that military skills meeting these quantitative criteria and the other criteria specified in section IV. of reference (a) will normally qualify for the indicated award.

1. *For Both Variable Reenlistment Bonus and Shortage Specialty (Proficiency Pay).* The quantitative indicator of the expected career manning improvement in a designated military specialty will be the expected number of additional career men to be gained in the military specialty as a result of the award. In the absence of evidence to the contrary in a particular military specialty the estimating factors in Table I will be used in making projections of first term reenlistment rate improvement.

a. For the Variable Reenlistment Bonus the extra career men will depend on the number of first termers eligible to reenlist and the projected improvement in the first term reenlistment rates.
b. For Shortage Specialty (Proficiency Pay) additional career reenlistment and retraining of other careerists into the military specialty may also be considered.

2. *For Variable Reenlistment Bonus.* The military specialty currently reflects, or in the absence of the retention incentive of the Variable Reenlistment Bonus, is projected to reflect by the end of the budget year one of the combinations of training investment and career manning shown in Table II.
3. *For Shortage Specialty (Proficiency Pay).* The military specialty currently reflects, or in the absence of the retention and career manning incentive of Shortage Specialty (Proficiency Pay), is projected to reflect by the end of the budget year and for at least two more years in the future one of the combinations of training investment and career manning shown in Table III, provided that it also meets the conditions in subsection IV.D. of reference (a).

Table I

Factors for Estimating the Improved First Term Reenlistment Rate to be Attained from Award of Various Levels of Variable Reenlistment Bonus and Shortage Specialty (Proficiency Pay)*

First Term Reenlistment Rate (%) With No Award			Multiply Reenlistment Rate Without Award by:								
More Than	and	Not More Than	Variable Reenlistment Bonus				Shortage Specialty (Proficiency Pay)				
			V-1	V-2	V-3	V-4	P-1		P-2	P-3	
							$30	$50	$75	$100	$150
0		10	1.30	1.35	1.65	1.75	1.00	1.00	1.25	1.60	1.75
10		15	1.30	1.35	1.65	1.70	1.00	1.00	1.20	1.55	1.70
15		20	1.25	1.30	1.55	1.60	1.00	1.00	1.15	1.50	1.65
20		25	1.20	1.25	1.45	1.50	1.00	1.00	1.15	1.47	1.60
25		30	1.15	1.20	1.35	1.40	1.00	1.00	1.10	1.42	1.55
30		35	1.10	1.15	1.25	1.30	1.00	1.00	1.05	1.40	1.50
35		50	1.05	1.10	1.20	1.25	1.00	1.00	1.03	1.30	1.40
50		—	1.00	1.05	1.10	1.15	1.00	1.00	1.00	1.20	1.25

*These factors are derived by averaging the estimated actual results for all services for the period FY 1963-FY 1967 inclusive (FY 1966-FY 1967 for Variable Reenlistment Bonus estimates), interpolating between actual observations, and extrapolating outside actual observations. Actual experience for each service may vary substantially from these overall estimates and when available, should be used in predicting improvement to be realized from any award.

Table II

Quantitative Criteria for Designation of a Military Specialty for the Variable Reenlistment Bonus

Position in Service Training Investment Array (Percentile)	Current or Projected Career Manning Level (%)
75th or above	95 or less
50th - 74th	90 or less
25th - 49th	80 or less
24th or below	Career inventory less than the number of billets authorized in pay grades E-6 and up plus one half (50%) of billets authorized in pay grade E-5.

Table III

Quantitative Criteria for Designations of a Military Specialty for Shortage Specialty (Proficiency Pay)

Position in Service Training Investment Array (Percentile)	Current or Projected Career Manning Level (%)
75th or above	90 or less
50th - 74th	80 or less
25th - 49th	70 or less
24th or below	Career inventory less than the number of billets authorized in pay grades E-7 and up plus three quarters (75%) of billets authorized in pay grade E-6.

4. *For Special Duty Assignment (Proficiency Pay).* The special duty assignment currently reflects, or in the absence of the incentive effect of Special Duty Assignment (Proficiency Pay), is projected to reflect by the end of the budget year a significant shortage of volunteer manning and related combination of total manning shown in Table IV, provided that it also meets the

conditions in subsection IV.D. of reference (a). The effects of changes in total manning requirements on the total and volunteer manning levels in the special duty assignment will be considered in evaluating the eligibility of the special duty assignment for designation.

B. *Individual Eligibility for Receipt of Awards*

1. *Variable Reenlistment Bonus.* An enlisted member is eligible to receive a Variable Reenlistment Bonus if he meets all the following conditions:

   a. Is qualified and serving on active duty in a military specialty designated under provisions of paragraph V.A.2. above for award of the Variable Reenlistment Bonus. Members paid a Variable Reenlistment Bonus shall continue to serve in the military specialty which qualified them for the bonus unless the Secretary of a Military Department determines that a waiver of this restriction is necessary in the interest of the Military Service concerned.
   b. Has completed at least 21 months of continuous active service other than active duty for training immediately prior to discharge, release from active duty, or extension of enlistment.
   c. Is serving in pay grade E-3 or higher.

Table IV

Quantitative Criteria for Initial/Continued Designation of a Special Duty Assignment for Special Duty Assignment (Proficiency Pay)

Current or Projected Total Manning Level (%)	Current or Projected Volunteer Manning Level (%)	Award
0 - 66	0 - 100	None
67 - 84	0 - 50	P-1($30)
	51 or above	None
85 - 94	0 - 25	P-1($50)
	26 - 66	P-1($30)
	67 or above	None
95 - 100	0 - 25	P-2($75)*
	26 - 50	P-1($50)
	51 - 75	P-1($30)
	76 or above	None

*No P-2 ($75) awards will be authorized until the actual effectiveness based on Service experience, of the lower awards has been evaluated and approved by the Assistant Secretary of Defense (Manpower and Reserve Affairs).

d. Reenlists in a regular component of the Military Service concerned within three (3) months (or within a lesser period if so prescribed by the Secretary of the Military Department concerned) after the date of his discharge or release from compulsory or voluntary active duty (other than for training), or extends his enlistment, so that the reenlistment or enlistment as extended provides a total period of continuous active service of not less than sixty-nine (69) months.

(1) The reenlistment or extension of enlistment must be a first reenlistment or extension for which a reenlistment bonus is payable.

(2) No reenlistment or extension accomplished for any purpose other than continued active service in the designated military specialty shall qualify a member for receipt of the Variable Reenlistment Bonus.

(3) Continued active service in a designated military specialty shall include normal skill progression as defined in the respective Military Service classification manuals.

e. Has not more than eight years of total active service at the time of reenlistment or extension of enlistment.

f. Attains eligibility prior to the effective date of termination of awards in any military specialty designated for termination of the award. Member must attain eligibility prior to the effective date of a reduction of award level to be eligible for the higher award level. Eligibility attained through any modification of an existing service obligation, including any early discharge granted pursuant to 10 U.S.C. 1171, must have been attained prior to the date the authority approving the modification was notified of the prospective termination or reduction of award in the military specialty.

g. Meets such additional eligibility criteria as may be prescribed by the Secretary of the Military Department concerned.

2. *Shortage Specialty (Proficiency Pay).* An enlisted member is eligible to receive Shortage Specialty (Proficiency Pay) if he meets all the following conditions:

a. Is on active duty, other than active duty for training as a reserve, and entitled to basic pay.

b. Is designated by the Military Service concerned as qualified in a military specialty designated under provisions of paragraph V.A.3. above, for award of Shortage Specialty (Proficiency Pay) and, except as provided in paragraph VI. B.1.d. below, is serving in that military specialty.
c. Is serving in pay grade E-3 or higher.
d. Except for members of reserve components ordered to active duty who have completed their service obligation under 10 U.S.C. 651, has completed at least 21 months of active service other than active duty for training.
e. Has completed a minimum of six months' continuous active service immediately before award of Shortage Specialty (Proficiency Pay) except that in the case of all members of reserve components ordered to active duty, this requirement may be waived upon a determination that the member, after entering on active duty, meets established qualification standards for the military specialty to which assigned.
f. Except for members of reserve components ordered to active duty, is a career member as defined in subsection II.I. of reference (a).
g. Attains eligibility under paragraphs V. B.2.a. through V.B.2.f. above, prior to the effective date of termination of awards in any military specialty designated for termination of award. Eligibility attained through any modification of an existing service obligation, including any early discharge granted pursuant to 10 U.S.C. 1171, must have been attained prior to the date the authority

approving the modification was notified of any prospective termination of award in the military specialty.
h. Meets such other conditions of eligibility as the Secretary of the Military Department concerned may prescribe.

3. *Special Duty Assignment (Proficiency Pay).* An enlisted member is eligible to receive Special Duty Assignment (Proficiency Pay) if he meets all the following conditions:

a. Is on active duty, other than active duty for training as a reserve, and entitled to basic pay.
b. Is serving in pay grade E-3 or higher.
c. Has completed the special schooling required for qualification in the special duty assignment or has completed equivalent on-the-job training in the special duty assignment. The duration of on-the-job training must be at least as long as the formal school training.
d. Is designated by the Military Service concerned as qualified in a special duty assignment designated under provisions of paragraph V.A.4. above, for award of Special Duty Assignment (Proficiency Pay), and, except as provided in paragraph VI.B.2.c. below, is serving in that special duty assignment.
e. Attains eligibility under paragraphs V. B.3.a. through V.B.3.d. above, prior to the effective date of termination of awards in any special duty assignment designated for termination of award.
f. Meets such other conditions of eligibility as the Secretary of the Military Department concerned may prescribe.

4. *Superior Performance (Proficiency Pay).* An enlisted member is eligible to receive Superior Performance (Proficiency Pay) if he meets all of the following conditions:
   a. Is on active duty, other than active duty for training as a reserve, and entitled to basic pay.
   b. Has completed a minimum of 21 months active service which, if it includes any period of active duty for training, shall be consecutive service.
   c. Is designated by the Military Service concerned as qualified in a military skill not designated for payment of Shortage Specialty (Proficiency Pay) or Special Duty Assignment (Proficiency Pay) and is serving in that military skill.
   d. Has demonstrated superior performance in the military skill in which serving for a minimum period of six months.
   e. Meets such other conditions of eligibility as the Secretary of the Military Department concerned may prescribe.

VI. MAINTENANCE, REDUCTION, AND TERMINATION OF AWARDS

A. *Variable Reenlistment Bonus.* Members serving in a military specialty designated for reduction or termination of award under the provisions of subsection IV.F. of reference (a), will receive the award level effective on the date of their reenlistment or extension of enlistment, except as provided in paragraph V.B. 1.f. above.

B. *Proficiency Pay.*

1. *Shortage Specialty (Proficiency Pay)*

   a. An eligible member assigned in a military specialty designated for Shortage

Specialty (Proficiency Pay) will be awarded the current award level for the military specialty on which his qualification is based.

   b. An individual's Shortage Specialty (Proficiency Pay) award will be terminated if it is determined that he has failed to maintain the minimum level of qualification required for satisfactory performance in the military specialty.
   c. If a member receiving Shortage Specialty (Proficiency Pay) is reclassified to a different military specialty, his Shortage Specialty (Proficiency Pay) will be terminated unless he is (1) immediately assigned to another military specialty eligible for such pay, or (2) attending a course of instruction in a new military specialty which has been designated to receive Shortage Specialty (Proficiency Pay) and the reclassification action is determined to be in the best interest of the Military Service concerned. The amount of Shortage Specialty (Proficiency Pay) awarded such personnel, while they are in a retraining status, will be (1) the current award level in their prior military specialty, or (2) the award level in the military specialty to which they are being retrained, whichever is lower.
   d. Except as otherwise provided in this paragraph, members receiving Shortage Specialty (Proficiency Pay) will serve in the military specialty on which the pay is based. When any member receiving Shortage Specialty (Proficiency Pay) is assigned or detailed to any duty not requiring qualification in the military specialty on which the pay is based, such pay will be terminated at the time of

that assignment or detail. This provision does not apply to members: (1) performing additional duty assignments not materially interfering with performance of their principle duties; (2) performing temporary or special duty not exceeding 90 days; (3) in attendance at a course of instruction where the course is directly related to the Shortage Specialty (Proficiency Pay) of the trainee or is necessary to qualify him for special assignment in that military specialty and where the trainee will be reassigned to that military specialty upon completion of training; (4) in patient or "pipe line" status; (5) on authorized leave; (6) serving between short tours when there are an insufficient number of authorized billets to permit such personnel to serve in the military specialty on which their qualification for Shortage Specialty (Proficiency Pay) is based or in another military specialty designated for the same Proficiency Pay rating, provided that such waivers will be granted only for the minimum periods specified in regulations of the Military Department concerned for rotation assignments between short tours.

e. Members serving in a military specialty designated for reduction of award level shall have their Shortage Specialty (Proficiency Pay) reduced to the new award level on the effective date of the reduction.

f. Members serving in a military specialty designated for termination of award shall have their Shortage Specialty (Proficiency Pay) reduced in phased increments in accordance with Table V.

Table V

If the Proficiency Rating in the Military Specialty/Special Duty Assignment on the Day Before the Effective Date of Termination of Award is:	The Award Level will be Reduced	
	On the Effective Day by:	On Each Anniversary of the Effective Day by:
P-3	one fourth	one fourth
P-2	one third	one third
P-1	one half	one half

2. *Special Duty Assignment (Proficiency Pay)*

a. An eligible member assigned in a special duty assignment designated for Special Duty Assignment (Proficiency Pay) will be awarded the current award level for the special duty assignment on which his qualification is based.

b. An individual's Special Duty Assignment (Proficiency Pay) award will be terminated if it is determined that he has failed to maintain the minimum level of qualification required for satisfactory performance in the special duty assignment.

c. Except as otherwise provided in this paragraph, members receiving Special Duty Assignment (Proficiency Pay) will serve in the special duty assignment on which the pay is based. When any member receiving Special Duty Assignment (Proficiency Pay) is assigned or detailed to any duty not requiring qualification in the special duty assignment on which the pay is based, such pay will be terminated at the time of that assignment or detail. This provision does not apply to members: (1) performing additional duty not materially interfering with performance in the special

duty assignment; (2) performing temporary or special duty not exceeding 90 days; (3) in attendance at a course of instruction where the course is directly related to or is necessary for continued qualification in the special duty assignment; (4) in patient or "pipe line" status; (5) on authorized leave.

d. Members serving in a special duty assignment designated for reduction of award level shall have their Special Duty Assignment (Proficiency Pay) reduced to the new award level on the effective date of the reduction.

e. Members serving in a special duty assignment designated for termination of award shall have their Special Duty Assignment (Proficiency Pay) reduced in phased increments in accordance with Table V.

3. *Superior Performance (Proficiency Pay)*

a. The amount of Superior Performance (Proficiency Pay) will be $30 a month.

b. Awards of Superior Performance (Proficiency Pay) shall normally be for a period of 12 months. If a member receiving Superior Performance (Proficiency Pay) is (1) reclassified to a military specialty not designated for Shortage Specialty (Proficiency Pay) or (2) assigned to a special duty assignment not designated for Special Duty Assignment (Proficiency Pay) he may continue to receive such payments for the remainder of the 12 month period provided he continues to be otherwise eligible.

c. Payments to members receiving Superior Performance (Proficiency Pay)

will be terminated if their military skill is designated for payment of Shortage Specialty (Proficiency Pay) or Special Duty Assignment (Proficiency Pay).

VII. REPORTS

A. Reports as specified at enclosure (1) will be submitted annually by the Secretary of each Military Department (the Secretary of the Navy will submit separate reports for the Marine Corps) to the Assistant Secretary of Defense (Manpower and Reserve Affairs) not later than 30 September each year. The reporting requirements of enclosure (1) have been assigned Report Control Symbol DD-M(A) 1045.

B. Reports as specified at enclosure (2) will be submitted quarterly by the Secretary of each Military Department (the Secretary of the Navy will submit separate reports for the Marine Corps) to the Assistant Secretary of Defense (Manpower and Reserve Affairs). All reports shall be submitted in three (3) copies prior to 50 days following the "as of" date. The reporting requirements of enclosure (2) have been assigned Report Control Symbol DD-M(Q)1046.

VIII. EFFECTIVE DATE AND IMPLEMENTATION

This Instruction is effective immediately for the development of plans, programs, and budgets, and shall be fully effective on July 1, 1971. Implementing regulations of the Military Services and all subsequent changes thereto will be submitted to the Secretary of Defense for review and approval prior to issuance. Six copies of approved regulations and charges will be submitted to the Assistant Secretary of Defense (Manpower and Re-

serve Affairs) within 60 days after approval of the regulation or change.

/s/ Roger T. Kelly
Assistant Secretary of Defense
(Manpower and Reserve Affairs)

Enclosures (2)

(1) Military Skill Evaluation and Program Performance

(2) Program Monitoring

EVALUATION OF MILITARY SKILLS AND PROGRAM PERFORMANCE

I. This enclosure prescribes annual report formats to evaluate military specialties for designation of Variable Reenlistment Bonus and Shortage Specialty (Proficiency Pay) awards; to evaluate Variable Reenlistment Bonus and Proficiency Pay program performance; and to evaluate special duty assignments for designation of Special Duty Assignment (Proficiency Pay) awards. Report formats are contained in three parts:

A. Punch card data required to evaluate military specialities in the Variable Reenlistment Bonus and Shortage Specialty (Proficiency Pay) programs and to evaluate individual requests for military specialty designation (Formats 1 through 4).

B. Data required to review and monitor program performance (Formats 5 through 7).

C. Data required to evaluate special duty assignments in the Special Duty Assignment Proficiency Pay) program and to evaluate individual requests for special duty assignment designation (Format 8).

II. *Evaluation of Military Specialties for Variable Reenlistment Bonus and Shortage Specialty (Proficiency Pay).* An evaluation of all military specialties within each Service will be conducted annually. Each Service will furnish four punch cards (A. through D. below) for each of the military specialties in their inventory during the current year. Punch cards are not required for individual requests; however, the appropriate data contained on the punch card formats will be furnished to support individual requests.

A. *Format 1—Training Investment/Total Manning*

This card identifies the Proficiency Pay status, the VRB status, the training cost and training

time for the military specialty, and the total inventory and total requirement in the military specialty for a five year period (Attachment 1).

B. *Format 2—First Term Reenlistment Rates*

This card contains the military specialty title and lists the number of regular first-termers eligible to reenlist and the number of first-termers that reenlisted in the military specialty for a five year period (Attachment 2).

C. *Format 3—Career Reenlistment Rates*

This card lists the number of careerists eligible to reenlist and the number of careerists that reenlisted in the military specialty for a five year period (Attachment 3).

D. *Format 4—Career Manning Level*

This card lists the number of careerists and requirement for careerists in the military specialty for a five year period (Attachment 4).

E. *Special Instructions*

1. To provide a realistic representation of flow into and through a career ladder, personnel within military specialities designated as helpers, apprentices, or strikers will be allocated on a percentage basis among their associated journeymen level military specialists. Personnel within military specialities designated as superintendents, supervisors, or "cappers" will be allocated on a percentage basis in the same manner.
2. Appropriate data for military specialties in the inventory during any part of a fiscal year will be submitted. If data are not available for an existing military specialty, estimates will be submitted for the military specialty by the Service. If a military specialty is not in the inventory during the

fiscal year or the data entry for the military specialty is zero (0), enter zero (0) in appropriate data fields.
3. The five year period of data where appropriate on punch card formats 1 through 4, will be the past fiscal year (actual), current fiscal year (projected), budget fiscal year (projected), and the next two fiscal years (projected).
4. All punch card information will be right justified in each field, e.g., five digit field with only three digit data (255) will be punched to reflect bb255 (b indicates that data field will be blank).
5. Army will submit "Total Manning" data in Format 1 for MOSs 09B and 11B with the last digit truncated; i.e., six digit data (120, 192) will be punched to reflect 12019, five digit data (99,847) will be punched to reflect b9985, etc.
6. Definition of terms are contained in section III of reference (a) and section IV of this Instruction. Services will furnish estimates if either training cost or training time is not available. Services will furnish by separate correspondence a list of military specialties for which estimates were used to compute training cost and training time.
7. Navy will submit separate data for each NEC and rating in the inventory. In addition, Navy will submit separate data for ratings designated for Shortage Specialty (Proficiency Pay); data for these ratings will be modified to exclude all data for NECs within these ratings that are designated for equal or higher levels of Shortage Specialty (Proficiency Pay).
8. Punch cards will be submitted by MOS/NEC/Rating/AFSC sets in ascending order (columns 2-6) 00001-99999. The punch card sets will contain Format 1 card (col-

umn 80) first, Format 2 card next, Format 3 card and then Format 4. All cards will be interpreted.

9. A roster print out of the punch cards will be furnished with data displayed in ascending order (see paragraph 8 above). The roster print out will contain two spaces between each data field to facilitate easy reading.

III. *Review and Evaluation of Program Performance.* Formats 5 through 7 list data required for reviewing and evaluating the annual Variable Reenlistment Bonus and Proficiency Pay programs and for monitoring the performance of the programs to assure efficient use of resources devoted to them (Attachments 5 through 7).

IV. *Evaluation of Service Special Duty Assignment for Special Duty Assignment (Proficiency Pay).* An evaluation of all special duty assignments within each service authorized Special Duty Assignment (Proficiency Pay) will be conducted annually. Each Service will furnish the data required by Format 8 for each special duty assignment currently approved in their Special Duty Assignment (Proficiency Pay) program. Individual requests will include supporting data outlined in Format 8 (Attachment 8).

V. *Service Recommended Programs.* Each service will submit their recommended Variable Reenlistment Bonus and Proficiency Pay programs by military skill and award level for the current fiscal year (revised) and budget fiscal year. Navy will include the number of authorized billets by military skill for their recommended Proficiency Pay programs.

FORMAT 1

EVALUATION OF MILITARY SPECIALTIES

TRAINING INVESTMENT/TOTAL MANNING PUNCH CARD INSTRUCTIONS

COLUMNS	INFORMATION
1	Service Identification (Army - A, Navy - N, USMC - M, USAF - F)
2-6	Military Specialty (Army - 1st three characters of MOS Code Navy - NEC and separate submission by rating USMC - 4 digit MOS USAF - 5 digit career ladder - x in 4th position)
7	Blank
8	Proficiency Pay Status Pro Pay 1 –1 Pro Pay 2 –2 Pro Pay 3 –3 No Pro Pay –Blank Indicate Shortage Specialty (Proficiency Pay) status for military specialty in columns 2-6 during current year.
9	Variable Reenlistment Bonus Status Multiplier one –1 Multiplier two –2 Multiplier three –3 Multiplier four –4 No VRB –Blank Indicate VRB Multiplier status for military specialty in columns 2-6 during current year.

FORMAT 1 (CONT'D)

COLUMNS	INFORMATION
10-14	Training Cost (in dollars)
15-18	Training Time (in years)
19-27	Blank
28-32	Past Fiscal Year; e.g., FY 1970 Total Requirement Total requirement for military specialty in columns 2-6
33-37	Past Fiscal Year; e.g., FY 1970 Total Inventory Total inventory for military specialty in columns 2-6
38-42	Current Year; e.g., FY 1971 Total Requirement
43-47	Current Year; e.g., FY 1971 Total Inventory
48-52	Budget Year; e.g., FY 1972 Total Requirement
53-57	Budget Year; e.g., FY 1972 Total Inventory
58-62	First Projected Year; e.g., FY 1973 Total Requirement
63-67	First Projected Year; e.g., FY 1973 Total Inventory
68-72	Second Projected Year; e.g., FY 1974 Total Requirement
73-77	Second Projected Year; e.g., FY 1974 Total Inventory
78-79	Blank
80	Card Identification Format 1 - 1

FORMAT 2

EVALUATION OF MILITARY SPECIALTIES

FIRST TERM REENLISTMENT PUNCH CARD INSTRUCTIONS

COLUMNS	INFORMATION
1	Service Identification
2-6	Military Specialty (Army - 1st three characters of MOS Code Navy - NEC and separate submission by rating USMC - 4 digit MOS USAF - 5 digit career ladder - x in 4th position)
7-27	Military Specialty Title
28-32	Past Fiscal Year; e.g., FY 1970 First Term Reenlistment Eligibles Number of regular first-termers eligible to reenlist for military specialty in columns 2-6 as defined in reference (b)
33-37	Past Fiscal Year; e.g., FY 1970 First Term Reenlistees Number of regular first-termers that reenlisted
38-42	Current Year; e.g., FY 1971 First Term Reenlistment Eligibles
43-47	Current Year; e.g., FY 1971 First Term Reenlistees
48-52	Budget Year; e.g., FY 1972 First Term Reenlistment Eligibles
53-57	Budget Year; e.g., FY 1972 First Term Reenlistees

FORMAT 2 (CONT'D)

COLUMNS	INFORMATION
58-62	First Projected Year; e.g., FY 1973 First Term Reenlistment Eligibles
63-67	First Projected Year; e.g., FY 1973 First Term Reenlistees
68-72	Second Projected Year; e.g., FY 1974 First Term Reenlistment Eligibles
73-77	Second Projected Year; e.g., FY 1974 First Term Reenlistees
78-79	Blank
80	Card Identification Format 2 - 2

FORMAT 3

EVALUATION OF MILITARY SPECIALTIES

CAREER REENLISTMENT
PUNCH CARD INSTRUCTIONS

COLUMNS	INFORMATION
1	Service Identification
2-6	Military Specialty (Army - 1st three characters of MOS Code Navy - NEC and separate submission by rating USMC - 4 digit MOS USAF - 5 digit career ladder - x in 4th position)
7-27	Blank
28-32	Past Fiscal Year; e.g., FY 1970 Career Reenlistment Eligibles Number of careerists eligible to reenlist for military specialty in columns 2-6 as defined in reference (b).
33-37	Past Fiscal Year; e.g., FY 1970 Career Reenlistees Number of careerists that reenlisted
38-42	Current Year; e.g., FY 1971 Career Reenlistment Eligibles
43-47	Current Year; e.g., FY 1971 Career Reenlistees
48-52	Budget Year; e.g., FY 1972 Career Reenlistment Eligibles
53-57	Budget Year; e.g., FY 1972 Career Reenlistees

FORMAT 3 (CONT'D)

COLUMNS	INFORMATION
58-62	First Projected Year; e.g., FY 1973 Career Reenlistment Eligibles
63-67	First Projected Year; e.g., FY 1973 Career Reenlistees
68-72	Second Projected Year; e.g., FY 1974 Career Reenlistment Eligibles
73-77	Second Projected Year; e.g., FY 1974 Career Reenlistees
78-79	Blank
80	Card Identification Format 3 - 3

FORMAT 4

EVALUATION OF MILITARY SPECIALTIES

CAREER MANNING LEVEL PUNCH CARD INSTRUCTIONS

COLUMNS	INFORMATION
1	Service Identification
2-6	Military Specialty (Army - 1st three characters of MOS Code Navy - NEC and separate submission by rating USMC - 4 digit MOS USAF - 5 digit career ladder - x in 4th position)
7-27	Blank
28-32	Past Fiscal Year; e.g., FY 1970 Career Requirement (E-5 and above) Career requirement for military specialty in columns 2-6
33-37	Past Fiscal Year; e.g., FY 1970 Career Inventory Career inventory for military specialty in columns 2-6
38-42	Current Year; e.g., FY 1971 Career Requirement (E-5 and above)
43-47	Current Year; e.g., FY 1971 Career Inventory
48-52	Budget Year; e.g., FY 1972 Career Requirement (E-5 and above)
53-57	Budget Year; e.g., FY 1972 Career Inventory
58-62	First Projected Year; e.g., FY 1973) Career Requirement (E-5 and above)

FORMAT 4 (CONT'D)

COLUMNS	INFORMATION
63-67	First Projected Year; e.g., FY 1973 Career Inventory
68-72	Second Projected Year; e.g., FY 1974 Career Requirement (E-5 and above)
73-77	Second Projected Year; e.g., FY 1974 Career Inventory
78-79	Blank
80	Card Identification Format 4 - 4

FORMAT 5

PROFICIENCY PAY PROGRAM PERFORMANCE

Date Prepared _____ Service _____

I. PROFICIENCY PAY PROGRAM	2d Past FY (Audited Actual)		Past FY (Actual)		Current FY (Revised)		Budget FY (Submit)	
	Man-Years[1]	($000)[2]	Man-Years[1]	($000)[2]	Man-Years[1]	($000)[2]	Man-Years[1]	($000)[2]
A. Shortage Specialty (SS)[3]								
o SS Active								
P-3 ($)								
P-2 ($)								
P-1 ($)								
Total SS Active								
o SS Terminations								
T-3 ($)								
T-2 ($)								
T-1 ($)								
Total SS Terminations								
o SS TOTAL								
B. Special Duty Assignment (SDA)[3]								
o SDA Active								
P-3 ($)								
P-2 ($)								
P-1 ($)								
Total SDA Active								
o SDA Terminations								
T-3 ($)								
T-2 ($)								
T-1 ($)								
Total SDA Terminations								
o SDA TOTAL								
C. Superior Performance (SP)								
TOTAL PROFICIENCY PAY PROGRAM								

1/ Proficiency Pay man-years is the yearly average of monthly payments.
2/ Dollar amount is the reported expenditure that should equal man-years times the yearly Proficiency Pay rate.
3/ Use separate line for each award level and dollar rate used.

FORMAT 5 (CONT'D)

II. Computation for Authorized Number of Superior Performance Awards[4/]	2d Past FY (Audited Actual)	Past FY (Actual)	Current FY (Revised)	Budget FY (Submit)
A. Total Enlisted Strength				
B. Less:				
Number assigned in specialties authorized SS				
Number assigned in special duty assignments authorized SDA				
Number with less than 21 months active service in skills not authorized SS or SDA				
Number with less than 6 months in skill for skills not authorized SS or SDA				
Number ineligible for SP for other reasons				
C. Total Eligibles to Compete for SP[5/]				
D. Percentage of Eligibles Authorized for Award of SP[5/]				
E. Number of Authorized Superior Performance Awards[5/6/]				

4/ All entries in part II will be "man-years".
5/ Army will further subdivide part II. C., D., and E., to compute the number of authorized SP awards in "Combat Arms" and "Support" skills separately.
6/ Enter the number of authorized SP awards under "man-year" column in part I. C. (Superior Performance) above.

FORMAT 6

VARIABLE REENLISTMENT BONUS PROGRAM PERFORMANCE

Date Prepared _____ Service _____

I. FISCAL YEAR PAYMENTS & FUNDS	2d Past FY (Audited Actual)			Past FY (Actual)			Current FY (Revised)			Budget FY (Submit)		
	#Payments	Avg Rate	($000)	#Payments	Avg Rate	($000)	#Payments	Avg Rate	($000)	#Payments	Avg Rate	($000)
NEW PAYMENTS												
First Installment												
V-4												
V-3												
V-2												
V-1												
Total First Installment												
Lump Sum												
V-4												
V-3												
V-2												
V-1												
Total Lump Sum												
TOTAL NEW PAYMENTS												
INSTALLMENT PAYMENTS												
Obligated Installment[1/]												
V-4												
V-3												
V-2												
V-1												
Total Oglibated Installment												
Accelerated Installment[2/]												
V-4												
V-3												
V-2												
V-1												
Total Accelerated Installment												
TOTAL INSTALLMENT												
TOTAL PROGRAM												

1304.15,9/3/70
Att 6 to Encl 1

FORMAT 6 (CONT'D)

II. RESIDUAL INSTALLMENT OBLIGATIONS BY FISCAL YEAR ($000)3/					
FISCAL YEAR	CURRENT FY (REVISED)	BUDGET FY (SUBMIT)			
TOTAL					

1/ Installment payment subsequent to first installment payment that is paid on the anniversary date of the reenlistment.
2/ Installment payment that is paid in advance of the anniversary date of the reenlistment.
3/ Report total funds obligated as a result of reenlistments during past fiscal years. Report by fiscal year for current, budget, and three future years. The amount reported in this section will include only obligated installment payments.

NOTE: Report submitted 30 September 1970 will be as complete as possible; report submitted 30 September 1971 will contain data outlined above.

1304.15, Sept 3, 70
(Att 6 to Encl 1)

FORMAT 7

UNADJUSTED REENLISTMENT RATES FOR ALL MILITARY SPECIALTIES BY TYPE AND LEVEL OF AWARD

Date Prepared _____ Fiscal Year _____ Service _____

PART I FIRST TERM REGULARS	NO PRO PAY(S)	PRO PAY 1	PRO PAY 2	PRO PAY 3	TOTAL
	Elig Reenl Rate	Elig Reenl Rate	Elig Reenl Rate	Elig Reenl Rate	Elig Reenl Rate
NO VRB					
VRB 1					
VRB 2					
VRB 3					
VRB 4					
TOTAL					
PART II TOTAL CAREER REGULARS	NO PRO PAY(S)	PRO PAY 1	PRO PAY 2	PRO PAY 3	TOTAL
	Elig Reenl Rate	Elig Reenl Rate	Elig Reenl Rate	Elig Reenl Rate	Elig Reenl Rate
NO VRB					
VRB 1					
VRB 2					
VRB 3					
VRB 4					
TOTAL					
Second Term Regulars	NO PRO PAY(S)	PRO PAY 1	PRO PAY 2	PRO PAY 3	TOTAL
	Elig Reenl Rate	Elig Reenl Rate	Elig Reenl Rate	Elig Reenl Rate	Elig Reenl Rate
NO VRB					
VRB 1					
VRB 2					
VRB 3					
VRB 4					
Total					
Other Career Regulars	NO PRO PAY(S)	PRO PAY 1	PRO PAY 2	PRO PAY 3	TOTAL
	Elig Reenl Rate	Elig Reenl Rate	Elig Reenl Rate	Elig Reenl Rate	Elig Reenl Rate
NO VRB					
VRB 1					
VRB 2					
VRB 3					
VRB 4					
Total					

NOTE: Data will be submitted separately for (1) past fiscal year, (2) current year, and (3) budget year.

FORMAT 8

EVALUATION OF SERVICE SPECIAL DUTY ASSIGNMENTS

Date Prepared _____ Service _____

I. Identification Data
- Duty Title:
- Duty Code:
- Duty Description:
- Special Qualifications:
- Grade Requirements:
- Source of Inputs:

II. Special Schooling
- Training Time:
- Training Cost:
- Course Capacity:
- Course Frequency:

A. Training Selection Rates:

	Second Past Year	Past Year	Reasons for Non-Selection of Volunteers:
Training Selection Rate			
Number of Volunteers Selected for School			
Total Number of Volunteers			

B. School Completion Rates:

	Second Past Year	Past Year	Reasons for Non-Completion of School:
School Completion Rate			
Number of School Completions			
Number of School Inputs			

III. Total Manning Data

	Second Past Year	Past Year	Current Year	Budget Year
Total Manning Level				
Total Inventory				
Total Requirements				

IV. Volunteer Manning Data

	Second Past Year	Past Year	Current Year	Budget Year
Volunteer Manning Level				
Qualified Volunteers				
Total Requirements				

V. Other Actions Taken to Induce Volunteers and When Initiated

VARIABLE REENLISTMENT BONUS AND PROFICIENCY PAY PROGRAMS MONITORING

I. This enclosure prescribes quarterly reports on enlisted personnel receiving Variable Reenlistment Bonus and Proficiency Pay awards. These reports are necessary to monitor the performance of these programs and to prepare reports for use within and outside the Department of Defense.

A. *Variable Reenlistment Bonus.* Report of the number of enlisted personnel receiving Variable Reenlistment Bonus awards by multiple and method of payment by DOD Occupational Area and Military Specialty (Format 9; Attachment 1).

B. *Proficiency Pay.* Report of the number of enlisted personnel in Proficiency Pay status by Proficiency Pay award level by DOD Occupational Area and Military Specialty (Format 10; Attachment 2).

II. *Reporting Instructions*

A. Reports will be quarterly as of 31 March, 30 June, 30 September, and 31 December showing by Service the number of enlisted personnel receiving Variable Reenlistment Bonus awards during the period (Format 9) and the number of enlisted personnel in Proficiency Pay status at the end of the quarter (Format 10).

B. The number of personnel receiving awards will be reported by Department of Defense one digit Occupational Area, as defined in reference (c). Individual Military Specialties shall be listed in numerical order within each one digit Occupational Area. Navy ratings shall be listed in alphabetical order within each one digit Occupational Area. Only Service reporting codes not included in reference (c) shall be included under the title "miscellaneous".

C. Definitions of terms are contained in section III of reference (a) and section IV of this Instruction.

FORMAT 9 (QUARTERLY)

Enlisted Personnel Receiving Variable Reenlistment Bonus by DOD Occupational Area and Military Specialty, for Period _____ thru _____

Date Prepared _____ **Service** _____

PART I: NEW PAYMENTS DOD Code and Occupational Area Military Code and Specialty	Total Number of Payments	FIRST INSTALLMENT Number of Payments				Cost	LUMP SUM Number of Payments				Cost
		V-4	V-3	V-2	V-1	($000)	V-4	V-3	V-2	V-1	($000)
X XXXX XXXXXXXXXXXX xxx xxxxxx xxxx xxx xxx xxxx xxx xxxxxx X XXXX XXXX XXXX XXXX xxx xxxx xxxxxxxxxx xxx xxxxxxxxxxx TOTAL											

PART II: INSTALLMENT PAYMENTS	Total Number of Payments	OBLIGATED[1] Number of Payments				Cost	ACCELERATED[2] Number of Payments				Cost
		V-4	V-3	V-2	V-1	($000)	V-4	V-3	V-2	V-1	($000)
TOTAL											

1/ Installment payment subsequent to first installment payment that is paid on the anniversary date of the reenlistment.

2/ Installment payment that is paid in advance of the anniversary date of the reenlistment. Each payment will be reported under "Number of Payments"; two payments made to the same member will be reported as two payments.

FORMAT 10 (QUARTERLY)

Enlisted Personnel in Proficiency Pay Status, by DOD Occupational Area and Military Specialty, as of _____ (end of quarter)

_____ Date Prepared

_____ Service

DOD Code & Occupational Area Military Code and Specialty	Total	Active Program[1]			Termination Program[1]		
		P-3 ($)	P-2 ($)	P-1 ($)	T-3 ($)	T-2 ($)	T-1 ($)
I. Shortage Specialty Program[2]							
X XXXXX							
xxxx xxxxxx xx							
xxxx xxx xxxx							
X XXX XXXX XX							
xxxx xxx xxx xxx							
xxxx xx xxxxxx							
TOTAL							
II. Special Duty Assignment Program[3]							
X XXXXX							
xxxx xxxxxx xx							
xxxx xx xx xxx							
X XXX XXXXX XX							
xxxx xxxx xx xxxx							
xxxx xxx xxxx xxx							
TOTAL							
III. Superior Performance Program							
TOTAL							

1/ Use separate column for each award level and dollar rate used.

2/ Number of personnel in Shortage Specialty (Proficiency Pay) program by primary military specialty identifier.

3/ Number of personnel in Special Duty Assignment (Proficiency Pay) program by special duty identifier.

EXHIBIT C

DEPARTMENT OF THE NAVY
Bureau of Naval Personnel
Washington, D.C. 20370

BUPERSINST 1133.18B
Pers-A124/gjm
19 December 1968

BUPERS INSTRUCTION 1133.18B

From: Chief of Naval Personnel

To: All Ships and Stations (less Marine Corps field addresses not having Navy personnel attached)

Subj: Variable Reenlistment Bonus (VRB) Program

Ref: (a) DOD Directive 1304.10 of 15 August 1968, Subj: Policies for Award of Variable Reenlistment Bonus and Proficiency Pay for Enlisted Personnel of the Military Services (NOTAL)
(b) DOD Instruction 1304.13 of 15 August 1968, Subj: Administration of Variable Reenlistment Bonus and Proficiency Pay Programs (NOTAL)
(c) BUPERSINST 1133.3 series (Enlisted Retention)
(d) BUPERS Manual
(e) DOD Military Pay and Allowances Entitlements Manual Part I, Chap. 9
(f) Navy and Marine Corps Military Pay Procedures (NAVSO P3007)
(g) BUPERSINST 1510.69 series (NESEP)
(h) Federal Income Tax Information for Service Personnel (NAVEXOS P1983 series)
(i) Instructions for Naval Manpower Information System Part I—Active (NAVPERS 15642)

(j) NAVCOMPTINST 7220.45 series

Encl: (1) Variable Reenlistment Bonus Eligibility and Multiple Assignments
(2) History of VRB Eligible Ratings/NEC's and Multiple Assignments
(3) Personnel Office Procedures
(4) Disbursing Office Procedures
(5) Brief sheet (detach and post on bulletin board or promulgate as appropriate)

1. Purpose. To update Instructions for administration of the Variable Reenlistment Bonus program as contained in references (a) and (b).

2. Cancellation. BUPERS Instruction 1133.18A, ALNAVS 64-67, 4-68 and 11-68 are hereby cancelled and superseded.

3. Background. The Secretary of Defense has placed increased value on the Variable Reenlistment Bonus as a method for increasing first term reenlistments in critical skill areas. References (a) and (b) delineate new policy and implementing provisions for Variable Reenlistment Bonus.

4. Definitions

a. Variable Reenlistment Bonus (VRB). A bonus which may be awarded to an enlisted member who reenlists in a designated rating or NEC, in addition to any pay and allowances to which he is otherwise entitled. The VRB may not exceed four times the Regular Reenlistment Bonus payable under Section 308(a), Title 37, U.S. Code.

b. Career Personnel. Personnel on second or * subsequent terms of active Naval service, and first term personnel who are serving on an enlistment as extended, or an extension of an enlistment, that will total 6 or more years of active naval service. Petty Officers in SIX-YEAR OBLIGATOR Programs whose obligation was incurred by an extension to their present enlistment are not counted as career personnel until they have over 4 years of service. SIX-YEAR OBLIGOR personnel on an

initial 6 year enlistment are not counted until they reenlist, or extend, for a reenlistment bonus.

c. VRB Multiple. The VRB multiple is established by a relative ranking of all ratings in order of career petty officer shortage. From this ranking, and considering the training investment, an appropriate VRB multiple is assigned to the ratings with career petty officer shortages. This determination will be performed as required and at least annually. Enclosure (1) will be revised accordingly. Enclosure (2) shows the effective dates and past VRB multiple assignments, and demonstrates that VRB eligibility changes periodically according to service needs.

d. Reenlistment. The term reenlistment, as used in this instruction, means any reenlistment, or extension of current enlistment, which creates eligibility for an initial regular reenlistment bonus, as specified in reference (d).

e. Career Requirements. The number of posi- * tions authorized at pay grades E-5 and above in each rating and NEC.

f. Career Manning Level. A quantitative * index, expressed as a percentage, that measures the extent to which the number of qualified career personnel in a rating or NEC meets the Career Requirements in that specialty.

g. Training Investment. A quantitative index * which establishes a rating or NEC's relative position in an array of all Navy ratings and NEC's. Position in the array is based on the length and cost of formal school training required to qualify first term personnel in a rating or NEC. The rating NEC having the longest and most costly training will have the highest index.

* 5. Policy. The general concept and intent of the VRB is to provide a flexible additional pay incentive to alleviate significant shortages of career petty officers in designated ratings and NEC's.

a. The Variable Reenlistment Bonus, because of its superior effectiveness as a career motivation incentive, will be used as the principal method of attaining an adequate Career Manning Level in presently undermanned ratings and NEC's. The major source of additional career personnel is the additional first-term reenlistments

that can be obtained by award of extra pay in the form of VRB.

b. A rating/NEC must currently reflect a significant shortage in career manning to be designated for VRB, and there must be a reasonable prospect of enough improvement in Career Manning Level in response to the VRB award to justify the cost.

c. The determination as to whether or not a particular rating NEC is designated for VRB award is normally based upon a quantitative comparison between the Training Investment and the Career Manning Level for that particular rating NEC.

The rating NEC must currently reflect, or be projected to reflect, one of the combinations of Training Investment and Career Manning Level shown in the table below:

Quantitative Criteria for Designation of a Specialty for the Variable Reenlistment Bonus

Position in Service Training Investment Array (Percentile)	Current or Projected Career Manning Level
75th or above	95% or less
50th - 74th	90% or less
25th - 49th	80% or less
24th or below	Career inventory less than the number of billets authorized in pay grades E-6 and up, plus one half (50%) of billets authorized in pay grade E-5.

d. Ratings NEC's with the higher Training Investment will require a smaller Career Manning Level Shortage to be considered significantly short.

e. The specific VRB multiple assigned to a rating NEC is contingent on the extent of the Career Manning Level shortages, the Training Investment in the rating NEC, the career manning improvement to be expected as a result of the VRB award and any other special

considerations relevant to the attainment of adequate career manning.

f. A review of current and projected manning and retention situations will be conducted in the ratings NEC's which attain or are expected to attain a career manning level of 105%. If it no longer meets the criteria in the table above, the rating NEC will be designated for reduction or termination of the award. In such case, the effective date of the reduction or termination will be announced to the field at least 90 days in advance.

g. Members awarded the VRB shall be qualified and normally utilized in the skills on which the bonus is based. Official BUPERS orders are prima facie evidence that assignment is based on "needs of the service". Local temporary additional duty, such as shore patrol or training, is not contrary to the intent of this limitation. Members paid a VRB shall continue to serve in the specialty which qualified them for the bonus, unless the Secretary of the Navy determines that a waiver of this requirement is necessary in the interest of the Navy.

h. Occasional cases of questionable VRB eligibility may occur incident to conversion to VRB-elibigle ratings. Guidelines and criteria for special cases are provided in paragraph 7. However, if, in the opinion of the commanding officer, a case does not fall within these criteria, he is to submit the circumstances, with his recommendations, to the Chief of Naval Personnel (Attn: Pers-A~~2~~24) for decision. The VRB shall not be paid unless a favorable decision is rendered, since erroneous VRB payments require labor bonus recoupment with attendant financial hardship.

i. VRB eligibility is not retroactive. Entitlement to a VRB vests only on the date the member reenlists (and is entitled to a first regular reenlistment bonus) and only if his rating or NEC is then currently on the effective list in enclosure (1), and only at the multiple specified therein. To prevent error and misunderstanding, enclosure (1) will always include an effective date of the listing. Retroactive payment of VRB to a member whose rating or multiple has been added to or changed on the list, but who reenlisted before the effective date, cannot be authorized.

6. Eligibility. To receive the VRB an individual must meet all of the following requirements for which no waivers will be made:

a. Be eligible for continuous service reenlistment in the Regular Navy in accordance with Article C-1403, or for extension of active duty enlistment in accordance wtih Article C-1407 of reference (d). No reenlistment or extension accomplished for any purpose other than continued active service in the designated rating NEC shall qualify a member for receipt of the VRB.

b. Be eligible for first Regular Reenlistment Bonus under the provisions of reference (e). Prior broken service in any of the Uniformed Services does not bar payment, provided member is eligible for first reenlistment bonus.

c. Be a petty officer in a VRB-eligible rating or NEC, or be an identified striker for a VRB-eligible rating serving in pay grade E-3.

d. Have completed at least 21 months of continuous active service, other than active duty for training, immediately prior to becoming eligible for the first regular reenlistment bonus.

e. Extend or reenlist in the regular Navy for a period which, when combined with current prior active service, totals not less than 69 months of continuous active service.

f. In applicable cases, reenlist within 3 months after discharge or release from active duty.

g. Attain eligibility prior to the effective date of termination of the VRB award in a rating NEC designated for termination. Eligibility attained through an early discharge for the purpose of immediate reenlistment, or extension of enlistment, must have been attained prior to the date on which the prospective termination is announced.

7. Special Cases. The following criteria govern special cases.

a. Eligibles. Personnel converting from one rating to another are eligible for VRB if all of the eligibility

requirements in paragraph 6 are met in addition to the following requirements:

(1) The member must complete conversion to VRB eligible skill prior to entering into an extension of his first enlistment.

(2) The conversion skill must be eligible for the VRB at the time of reenlistment.

(3) Petty officers converting from one VRB-eligible skill to another VRB-eligible skill, and not under the SCORE Program, are not eligible for VRB until conversion is complete. If conversion is not completed prior to termination of the present enlistment, a non-bonus-eligible extension of one year may be entered into, provided it does not conflict with the provisions of paragraph C-1407 of reference (d).

(4) Personnel converting from one VRB-eligible skill to another VRB-eligible skill under the SCORE Program are entitled to VRB at the multiple of the skill held at the time of reenlistment.

(5) To be eligible for VRB, petty officers and identified strikers reenlisting under the SCORE Program must reenlist under the continuous service criteria of Article C-1403 of reference (d), and must convert only to a rating assigned a higher VRB multiple at the time of reenlistment.

b. Non-Eligibles

(1) Petty officers in ratings currently eligible for VRB, converting to a non-eligible skill, are not eligible for the VRB. The process of conversion is defined as any administrative action, voluntary or involuntary, initiated by the individual or the Navy, to accomplish a change of rating.

(2) Personnel not in a VRB-eligible skill who have less than two years remaining on their first enlistment, and for SCORE Program eligibility would have to reenlist before conversion to have the required six years of obligated service, are not eligible to receive VRB.

c. Reenlistments within 3 Months After Separation from Active Service

When VRB-eligible personnel reenlist within 3 months after separation, VRB payment cannot be made until

eligibility for the initial Regular Reenlistment Bonus is established. Procedures establishing eligibility for the initial Regular Reenlistment Bonus are listed in paragraph 10902b of reference (f), and in reference (j).

d. NESEP Candidates. Petty Officers reenlising to meet the minimum service requirements for NESEP as prescribed by reference (g), or for other programs leading to commissioned status, are not eligible for VRB for such reenlistment.

(1) In cases in which an extension will fulfill the minimum service requirements for NESEP, eligible members may continue to receive annual VRB installments to which entitled under the original reenlistment contract, if applicable. However, no additional installments are authorized as a result of such extension.

(2) VRB payments for reenlistments contracted subsequent to NESEP application but prior to selection for such training will be held in abeyance pending results of the selection process. Applicants not selected for training, and otherwise eligible, may receive VRB. Those selected for NESEP will not receive VRB.

8. Reenlistment Interview. To attain the objectives of the VRB Program each potential reenlistee who would be eligible for the VRB, or may become eligible due to conversion or attainment of a new NEC must be informed of his eligibility and the monetary benefits of the VRB Program.

a. The Reenlistment interview, held six months before EAOS in accordance with reference (c), must cover the following additional subjects:

(1) VRB eligibility.
(2) Present reenlistment intentions.
(3) Amount of VRB for which potential reenlistee is currently eligible.
(4) VRB Program flexibility and possibility of changes which might decrease the amount of bonus to which entitled at the time of reenlistment.
(5) Any limiting factor which could make VRB payment questionable.

(6) Advantages of early reenlistment to obtain present amount of VRB vice uncertainty of future value of the VRB.
(7) Normal VRB payment method (equal annual installments in each year of the enlistment period). (See paragraph 9)
(8) Possibility of payment in fewer annual installments in special meritorious cases and procedures to be used to request it. (See paragraph 9)
(9) Combat income tax exemption, if applicable. (See paragraph 14)

b. A report of the VRB counselling is to be entered on Reenlistment Interview Form (NAVPERS 736) in accordance with reference (c).

NOTE: Accurate determination of VRB eligibility is essential in order to preclude possible recoupment actions. The effect on morale of an inaccurate determination is obvious. Attention is invited to the portions of references (f) and (j) concerning determination of VRB eligibility.

9. Method of Payment. The VRB is to be paid in equal annual installments in each year of the enlistment period. The first installment is to be paid upon reenlistment and subsequent installments on each succeeding anniversary during the new enlistment. It is emphasized that the installment method is the normal method of payment provided for in the public law (Title 37, U.S. Code).

a. In especially meritorious cases, VRB can be paid in fewer installments or in a lump sum. These payment methods require the approval of the Chief of Naval Personnel. Because of the impact that accelerated payments make on the fiscal allocation of funds to the Navy for VRB, such awards can be made for meritorious reason only to highly deserving personnel. The determination is made based on the applicant's reasons, the commanding officer's endorsement, and a review of the applicant's performance record and disciplinary involvements as shown in his duplicate service record in the Bureau of Naval Personnel.

b. Requests for lump-sum payment, up to the time of reenlistment, may be submitted at any time. To

permit payment at reenlistment, the request should be submitted 90 days in advance, or as soon thereafter as the reenlistment decision is made. Payment of remaining unpaid balance subsequent to the VRB reenlistment is not provided for in fiscal funding, therefore accelerated payments of remaining amounts will not normally be authorized. However, in cases where unexpected, unusual circumstances of an emergency nature cause extreme financial hardship, consideration will be given to requests for payment of the remaining unpaid amount of VRB. The existence of such circumstances and the resultant hardship must be verified by the commanding officer in his endorsement to the request.

c. Requests for accelerated or lump-sum payments are to be submitted to the Chief of Naval Personnel (Pers-B2212) via the commanding officer.

(1) The request must state:

(a) The reason for which such payment is desired.
(b) Number of installments requested.
(c) An understanding of the increased tax obligation resulting, and of the possible advantage of income averaging for tax purposes, which is described in reference (h). For special tax instructions concerning reenlistment in the combat zone, see paragraph 14.

(2) The commanding officer's endorsement must include:

(a) Recommendation with such substantiating remarks concerning the merit and or the purpose of the request.
(b) Average performance marks for each trait as shown on Page 9 of member's Service Record.
(c) Statement that member has been briefed on effects of increased annual income on tax obligation and the possible advantage of income tax averaging.

* 10. Service Record and Personnel Diary Entries. Required Service Record entries and Personnel Diary entries are described in enclosure (3). It is essential that commanding officers insure complete and accurate entries, as this information provides data support for Bureau budget requests to fund this program.

* 11. Disbursing Procedures. Commanding officers must ensure that the correct procedures for substantiation and pay record entries are used. These procedures are described in enclosure (4). Complete and accurate reporting is essential to provide data for budget justification. Attention is directed to reference (j) and paragraph 10931 of reference (f).

12. Nonapplicability of Reenlistment Bonus Limitation. The amount of VRB is not considered in the $2,000 limitation on the total amount of Regular Reenlistment Bonus which may be paid under paragraph 10906 of reference (e). However, this limitation does apply to the Regular Reenlistment Bonus amount used in computation of the VRB. Therefore, the maximum value for the VRB is $8,000 (maximum multiple 4 times the $2,000 maximum Regular Reenlistment Bonus) and the maximum total bonus is $10,000.

13. Recoupment

a. Entitlement. The unearned portion of the VRB payment already paid must be recouped in cases of discharge before normal expiration of enlistment, if conditions cited in paragraphs 10921, 10922, and 10923 of reference (e) exist. If a member who is entitled to VRB and is receiving it in equal annual installments fails to complete his enlistment under conditions which do not require recoupment of the reenlistment bonus (para. 10921, 10922, 10923 of reference (e)), the balance of the unpaid VRB installments remaining is payable in a lump-sum to be included in the final settlement of the pay account.

b. Action by Commanding Officer. A DD Form 114 (in triplicate) will be furnished to the Disbursing Officer, certifying the following:

> "Enlistment terminated on (date) for reason not requiring recoupment of reenlistment bonus and VRB."
>
> Total VRB entitlement $_____
> Previous VRB paid $_____
> Balance VRB due $_____

14. Withholding Tax

a. Reenlistment in Combat Zone. When the reenlistment for which VRB is payable occurs in a calendar month during any part of which the member served in a combat zone, or was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone, the initial and subsequent installments are *not subject to withholding tax* and need not be reported as income subject to tax, regardless of when payment is made or where the member is then located.

b. Reenlistment Outside Combat Zone. If the reenlistment for which VRB is payable occurs in a month during no part of which the member served in a combat zone, then the VRB is subject to withholding tax and will be taxed in the same manner as the Regular Reenlistment Bonus, and each subsequent annual installment is subject to withholding tax and will be taxed in the year in which paid. *Even if payment of subsequent installments occurs while the member is in a combat zone, such installments are subject to withholding tax and must be reported as income subject to tax.*

15. Authorization

a. The Variable Reenlistment Bonus (VRB) is authorized by Title 37, U.S. Code, Section 308. The entitlements portion of this instruction was approved by the DOD Military Pay and Allowances Committee under procedures prescribed by the Secretary of Defense, in accordance with Section 1001, Title 37, USC.

b. This directive conforms with Secretary of Defense Instructions specified in references (a) and (b).

R. R. CRUTCHFIELD
Assistant Chief of Naval Personnel

Distribution:

SNDL Parts 1 and 2

Stocked:

Supply Fiscal Dept. (Code 514.32)
Naval Station, Washington, D.C. 20390

VRB ELIGIBLE RATINGS WITH MULTIPLES

Effective 1 July 1969

RATING	MULTIPLE
Aviation Fire Control Technician (AQ)	4
Aviation Electronics Technician (AT)	4
Aviation Anti-Submarine Warfare Operator (AW)	4
Boilerman (BT)	4
Communications Tech. (CT)	4
Damage Controlman (DC)	4
Data Processing Tech. (DP)	4
Data Systems Technician (DS)	4
Electricians Mate (EM)	4
Engineman (EN)	4
Electronics Technician (ET)	4
Fire Control Technician (FT)	4
Interior Communications Electrician (IC)	4
Machinist's Mate (MM)	4
Photographic Intell.Man (PT)	4
Quartermaster (QM)	4
Radarman (RD)	4
Radioman (RM)	4
Shipfitter (SF)	4
Sonar Technician (ST)	4
Air Controlman (AC)	3
Aviation Electrician's Mate (AE)	3
Aviation Ordnanceman (AO)	3
Gunner's Mate (GUNS) (GMG)	3
Gunner's Mate (TECH) (GMT)	3
Machinery Repairman (MR)	3
Opticalman (OM)	3
Signalman (SM)	3
Torpedoman's Mate (TM)	3
Builder (BU)	2
Construction Electrician (CE)	2
Construction Mechanic (CM)	2
Disbursing Clerk (DK)	2
Engineering Aid (EA)	2
Equipment Operator (EO)	2
NEC SKILL Hospital Corpsman (HM) (For Following NEC's Only)	
8406 Aviation Medicine Technician	2
841X Laboratory Technician	2
8432 Preventive Medicine Tech.	2
8492 Special Operations Tech.	2
8493 Medical Deep Sea Diving Tech.	2
Instrumentman (IM)	2
Steelworker (SW)	2
Utilities Man (UT)	2
Aerographer's Mate (AG)	1
Aviation Structural Mechanic (AM)	1
Commissaryman (CS)	1
Patternmaker (PM)	1
Storekeeper (SK)	1

Enclosure (1)

History of VRB Eligible Ratings/NEC's and VRB Multiples Assigned
Eligibility and Multiple on or after:

RATING	1 JAN 66	20 APR 66	3 NOV 67	1 JUL 68	1 JAN 69	1 JUL 69
AQ	3	4	4	4	4	4
AT	2	3	3	4	4	4
AW	-	-	-	-	4	4
AX	3	4	4	4	4	-
BT	2	3	3	4	4	4
CT	3	4	4	4	4	4
DC	-	2	2	4	4	4
DP(MA)	2MA	3MA	3MA	4DP	4DP	4DP
DS	3	3	3	4	4	4
EM	1	3	3	4	4	4
EN	1	3	3	4	4	4
ET	3	4	4	4	4	4
FT	3	3	3	4	4	4
IC	2	3	3	4	4	4
MM	1	3	3	4	4	4
PT	4	4	4	4	4	4
QM	1	3	3	4	4	4
RD	3	3	3	4	4	4
RM	2	3	3	4	4	4
SF	-	2	2	4	4	4
ST	4	4	4	4	4	4
AC	-	-	-	1	1	3
AE	-	2	2	3	3	3
AO	-	2	2	3	3	3
GMG	-	2	2	3	3	3
GMT	1	2	2	3	3	3
MR	-	2	2	3	3	3
OM	1	2	2	3	3	3
SM	1	2	2	3	3	3
TM	1	2	2	3	3	3

History of VRB Eligible Ratings/NEC's and VRB Multiples Assigned
Eligibility and Multiple on or after:

RATING	1 JAN 66	20 APR 66	3 NOV 67	1 JUL 68	1 JAN 69	1 JUL 69
BU	-	2	2	2	2	2
CE	-	2	2	2	2	2
CM	-	2	2	2	2	2
DK	-	-	-	2	2	2
EA	1	2	2	2	2	2
EO	-	2	2	2	2	2
HM 8404	-	-	2	2	-	-
8405	-	-	2	2	-	-
8406	-	-	2	2	2	2
8409	-	-	2	2	-	-
8413	-	-	2	2	-	-
8417	-	-	2	2	-	-
841X	-	-	-	-	-	2
8432	-	-	2	2	2	2
8483	1	1	1	2	-	-
8484	-	-	2	2	-	-
8488	-	-	-	2	-	-
8489	-	-	2	2	-	-
8492	-	-	2	2	2	2
8493	-	-	2	2	2	2
8498	-	-	2	2	2	-
IM	-	-	-	2	2	2
MT	1	2	2	2	-	-
SW	-	2	2	2	2	2
UT	-	2	2	2	2	2
AG	-	1	1	1	1	1
AM	-	1	1	1	1	1
CS	-	1	1	1	1	1
SK	-	1	1	1	1	1
PM	-	1	1	1	1	1

* PERSONNEL OFFICE PROCEDURES

1. *Service Record.* The commanding officer shall cause the following certification to be entered on Page 5 and Page 13 of the reenlistee's Service Record:

a. "(Effective Date). Reenlisted (extended) this date, entitled to regular reenlistment bonus, and to VRB based on ——— rating/NEC and VRB multiple ———. The VRB to be paid in ——— installments commencing this date." This action, combined with appropriate Personnel Diary entries, will certify entitlement to the VRB. Payment is to be authorized and substantiated by a Military Pay Order (DD Form 114) in accordance with enclosure (4).

b. Upon receipt of the DD Form 114, endorsed by the disbursing officer to show the amount paid (See enclosure (4)), add the following entry to the foregoing certification:

"Total VRB Entitlement $——— 1st of ——— installments of $——— on (date)".

c. Subsequent installments are to be entered on the Pages 5 and 13 as:

"Paid (2nd, 3rd, . . . final) VRB Installment of $——— on (date)".

2. *Service Record Entries for SCORE Reenlistees:* In cases involving personnel becoming eligible for the VRB under the provisions of the SCORE Program, make the following service record entries:

a. "(Effective date). Agreed to reenlist (extend) for a period of —— years for purpose of SCORE conversion from (present rate) to (conversion rate) in accordance with BUPERSINST 1440.27 series and entitled to the benefits therein. Conversion trainee NEC XX-XX99 will be assigned by BUPERS. If entitled to first Regular Reenlistment Bonus, and if successful conversion acomp-

lished prior to entering into an extension of enlistment, will be entitled to VRB for (conversion rating) based on the VRB multiple authorized at the time of reenlistment or extension".

b. Upon meeting all requirements for the VRB and upon reenlistment, the standard VRB Service Record entry above is to be utilized. If the petty officer's conversion rating has been removed from VRB eligibility at the time of reenlistment, the VRB shall not be paid. In this event, no additional Service Record entry is required.

3. *Personnel Diary Entries.* Correct, timely diary entries are essential. Diary reenlistment entries are the primary source of the monitoring information required by the Bureau of Naval Personnel. Personnel Diary entries for the VRB reenlistments are to be made in the following manner:

INFORMATION OF SPECIAL INTEREST TO NAVAL PERSONNEL

BUPERSINST 1133.18B
of 19 December 1968

Subj: Variable Reenlistment Bonus (VRB) Program

The Variable Reenlistment Bonus is an additional bonus paid to eligible members in designated ratings which have a relatively high training investment and a significant shortage of career personnel. At present, this bonus is paid only at the first reenlistment point. However, a DOD study now being made could result in a similar bonus being paid at second and subsequent reenlistment points.

All Navy ratings are considered for VRB in accordance with criteria established by DOD. Those ratings eligible for the remainder of FY 69 are listed at their assigned multiple in enclosure (1) of the instruction.

Eligibility criteria for the individual person include:

(1) Must have completed 21 months of continuous active service, (2) Must obligate for a total of 69 months (which can include prior active service), (3) Must be eligible for *first* regular reenlistment bonus, (4) Must be on current eligibility list at pay grade E-3 (designated striker) or higher, (5) Must be eligible to reenlist in accordance with BUPERS Manual.

Since the number of careerists in a rating is significant in determining rating eligibility, the list of eligible ratings is subject to change.

Recommended Date for Disposal or Removal from Bulletin Boards—28 FEB 1969

It Is Recommended That This Brief Sheet Be Displayed On The Bulletin Board Printed In The Daily Bulletin Plan On The Day Or Weekly Newspaper Or Copied And Distributed To Officers And Men Affected

DEPARTMENT OF THE NAVY
Bureau of Naval Personnel
Washington, D.C. 20370

BUPERSINST 1133.18E
Pers-B2212-jlb
23 March 1972

BUPERS INSTRUCTION 1133.18E

From: Chief of Naval Personnel

To: All Ships and Stations (less Marine Corps field addresses not having Navy personnel attached)

Subj: Variable Reenlistment Bonus (VRB) Program

Ref: (a) DOD Directive 1304.14 of 3 Sep 1970, Subj: Policies for Award of Variable Reenlistment Bonus and Proficiency Pay for Enlisted Personnel of the Military Services (NOTAL)
(b) DOD Instruction 1304.15 of 3 Sep 1970, Subj: Administration of Variable Reenlistment Bonus and Proficiency Pay Program (NOTAL)
(c) DOD Military Pay and Allowances Entitlements Manual
(d) BUPERSMAN
(e) Navy and Marine Corps Military Pay Procedures (NAVSO P3007)
(f) BUPERSNOTE 1040 of 7 July 1971 (Canceled Dec 71)
(g) Federal Income Tax Information for Armed Forces Personnel (NAVSO P1983 series)
(h) Instructions for Naval Manpower Information System, Part I—Active (NAVPERS 15642)

Encl: (1) VRB Eligibility List and Multiple Assignments
(2) History of VRB-Eligible Ratings/NEC's and Multiple Assignments

(3) Format for Lump-Sum Payment Requests and VRB Information Sheet
(4) Personnel Office Procedures
(5) Brief sheet (detach and utilize as appropriate, then destroy)

1. Purpose. To promulgate revised instructions for administration of the Variable Reenlistment Bonus Program and to call attention to the relationship between the bonus and Reenlistment Quality Control.

2. Cancellation. BUPERS Instruction 1133.18D is hereby canceled and superseded as of 1 July 1972.

3. Background. The Secretary of Defense has placed increased value on the Variable Reenlistment Bonus as a method for increasing first-term reenlistments in critical skill areas. References (a) and (b) delineate policy and implementing provisions for Variable Reenlistment Bonus.

4. Definitions

a. Variable Reenlistment Bonus (VRB). A bonus which may be awarded to an enlisted member who reenlists in a designated rating or NEC in addition to any pay and allowances to which he is otherwise entitled. The VRB may not exceed four times the Regular Reenlistment Bonus payable under Section 308(a), Title 37, U.S. Code.

b. VRB Multiple. The multiple is established by a relative ranking of all ratings in order of career petty officer shortages. From this ranking, and considering the training investment, an appropriate VRB multiple is assigned to the ratings/NEC's with career petty officer shortages. This determination will be performed when required, and at least annually. Enclosure (1) will be revised accordingly. Enclosure (2) indicates the effective dates and past VRB multiple assignments, and demonstrates that VRB eligibility changes periodically according to service needs.

c. Reenlistment. The term "reenlistment" as used in this instruction, means any reenlistment, or extension of

current enlistment, which creates eligibility for a first Regular Reenlistment Bonus as specified in reference (c).

d. Career Requirements. The number of positions authorized for PO2 and above in each rating and NEC.

e. Career Manning Level. A quantitative index, expressed as a percentage, that measures the extent to which the number of qualified career personnel in a rating or NEC meets Career Requirements in that specialty.

f. Training Investment. A quantitative index which establishes a rating or NEC relative position in an array of all Navy ratings and NEC's. The position in the array is based on the length and cost of formal school training required to qualify first-term personnel in a rating or NEC. The rating/NEC having the longest and most costly training will have the highest index.

5. Policy. The general concept and intent of the VRB is to provide a flexible, additional pay incentive to alleviate significant shortages of career petty officers in designated ratings and NEC's by obtaining additional first-term reenlistments.

a. The Variable Reenlistment Bonus, because of its superior effectiveness as a first-term reenlistment incentive, will be used as the principal method of attaining an adequate Career Manning Level in presently undermanned ratings and NECs. The major source of additional career personnel is the additional first-term reenlistments that can be obtained by the award of extra pay in the form of VRB.

b. It is the intent of the Chief of Naval Personnel that, in utilizing the Variable Reenlistment Bonus as a first-term reenlistment incentive, continued and increasing attention be given to quality performance in those who are reenlisted. Strict adherence to the Reenlistment Eligibility Criteria in reference (d) is required if the professional quality of the career force is to be improved.

c. Members awarded the VRB shall be qualified and normally utilized in the rating/NEC on which the bonus is based. Local temporary additional duty, such as shore patrol or training, is not contrary to the intent of this limitation. Members paid a VRB shall continue to serve

in the rating/NEC which qualified them for the bonus, unless the Secretary of the Navy determines that a waiver of this requirement is necessary in the interest of the Navy.

d. Occasional cases of questionable VRB eligibility may occur incident to conversion to VRB-eligible ratings. Guidelines and criteria for special cases are provided in paragraph 8. However, if in the opinion of the commanding officer, a case does not fall within these criteria, he is to submit the circumstances with his recommendations to the Chief of Naval Personnel (Pers-B221) for decision. The VRB shall not be paid unless a favorable decision is rendered, since erroneous VRB payments require later bonus recoupment, with attendant financial hardship.

e. VRB eligibility is not retroactive. Entitlement to a VRB vests only on the date the member reenlists (and is entitled to a first-Regular Reenlistment Bonus) and only if his rating or NEC is then currently on the effective list in enclosure (1), and only at the multiple specified therein. To prevent error and misunderstanding, enclosure (1) will always include an effective date of the listing. Retroactive payment of VRB to a member whose rating or multiple has been added to or changed on the list, but who reenlisted before the effective date, cannot be authorized.

6. Determination of Eligible Ratings/NEC's. The following description of the theory and procedures used for determining what ratings and NEC's are eligible for VRB is provided in order to promote a better understanding of the periodic changes which will take place in the listing of VRB-eligible ratings and multiples:

a. A rating/NEC must currently reflect a significant shortage in career manning to be designated for VRB, and there must be a reasonable prospect of enough improvement in Career Manning Level in response to the VRB award to justify its cost.

b. The determination as to whether or not a particular rating/NEC is designated for VRB award is normally based upon a quantitative comparison between the

Training Investment and the Career Manning Level for that particular rating/NEC. The rating/NEC must currently reflect, or be projected to reflect, one of the combinations of Training Investment and Career Manning Level shown in the table below:

Quantitative Criteria for Designation of a Specialty for the Variable Reenlistment Bonus

Position in Service Training Investment Array (Percentile)	Current or Projected Career Manning Level
75th or above	95% or less
50th - 74th	90% or less
25th - 49th	80% or less
24th or below	Career inventory less the number of billets authorized for PO1 and above, plus one half (50%) of billets authorized or PO2.

c. Ratings/NEC's with higher Training Investment will require a smaller Career Manning Level shortage to be considered significantly short.

d. The specific VRB multiple assigned to a rating/NEC is contingent on the extent of the Career Manning Level shortage, the Training Investment in the rating/NEC, the career manning improvement to be expected as a result of the VRB award and any other special considerations relevant to the attainment of adequate career manning.

e. A review of current and projected manning and retention situations will be conducted in the ratings/NEC's which attain or are expected to attain a Career Manning Level of 105 percent. If it no longer meets the criteria in the table above, the rating/NEC will be designated for a reduction or termination of the award. In such a case, the effective date of the reduction or termination will be announced at least 90 days in advance.

7. Eligibility. To receive the VRB, an individual must meet all the following requirements for which no waivers will be made, except as provided for in paragraph 8.

a. Be eligible for continuous service reenlistment in the Regular Navy in accordance with article 1040300, or for extension of active duty enlistment in accordance with article 1050150 of reference (d). No reenlistment or extension accomplished for any purpose other than continued active service in the designated rating/NEC shall qualify a member for receipt of the VRB.

b. Be eligible for first-Regular Reenlistment Bonus under the provisions of reference (c). Prior broken service in any of the Uniformed Services does not bar payment, provided member is eligible for first-Regular Reenlistment Bonus.

c. Be a petty officer in a VRB-eligible rating or NEC, or be an identified striker for a VRB eligible rating serving in pay grade E-3.

d. Have completed at least 21 months of continuous active service, other than active duty for training, immediately prior to becoming eligible for the first-Regular Reenlistment Bonus.

e. Extend or reenlist in the Regular Navy for a period which, when combined with current prior active service, totals not less than 69 months of continuous active service.

f. Have not more than 8 years of total active duty. (Active duty is defined as full time duty in the active service of a uniformed service, including duty on the active list, full time training duty, annual training duty, and attendance while in the service, at a school designated as a service school by law or by the Secretary of the Navy.)

g. In applicable cases, reenlist within 3 months after discharge or release from active duty.

h. Attain eligibility prior to the effective date of termination of the VRB award in a rating/NEC designated for termination. Member must attain eligibility prior to the effective date of a reduction of award level to be eligible for the higher award level. Eligibility attained through an early discharge for the purpose of immediate reenlistment, or extension of enlistment, or other modi-

fication of an existing service obligation including any early discharge granted pursuant to article 3840240 of reference (d) (discharge within 3 months of expiration of active obligated service) shall be attained prior to the date the authority approving the modification is notified of the prospective termination or reduction of award in the rating/NEC. This is the date a command receives the Bureau of Naval Personnel directive announcing termination or reduction of awards in the rating/NEC.

8. Special Cases. The following criteria govern special cases:

a. Eligibles. Petty officers converting from one rating to another rating are eligible for VRB if all of the eligibility requirements in paragraph 7 are met in addition to the following requirements:

(1) The petty officer must complete conversion to a VRB-eligible rating prior to entering into a bonus-length extension of his first enlistment.

(2) The conversion rating must be eligible for the VRB at the time of reenlistment or extension of enlistment.

(3) Petty Officers converting from one VRB-eligible rating to another VRB-eligible rating, and not under the SCORE Program, are not eligible for VRB until conversion is complete. If conversion is not completed prior to termination of the present enlistment, a nonbonus-eligible extension of 1 year may be entered into, provided it does not conflict with the provisions of article 1050150 of reference (d).

(4) To be eligible for VRB, petty officers and identified strikers reenlisting under the SCORE Program must reenlist under the continuous service criteria of article 1040300 of reference(d), and must convert only to a rating assigned the same or a higher VRB multiple at the time of reenlistment.

(5) Qualified personnel are permitted to convert from a higher to a lower VRB multiple under the SCORE Program. When necessary, personnel will be permitted to

extend for a nonbonus period, and then after successful conversions, be reenlisted in their new rating. These personnel would then be eligible for VRB, providing their new rating was on the current VRB eligibility list.

b. Non-eligibles

(1) Petty officers in ratings currently eligible for VRB, converting to a non-eligible rating, are not eligible for the VRB. The process of conversion is defined as any administrative action, voluntary or involuntary, initiated by the individual or the Navy, to accomplish a change of rating.

(2) Personnel in a rating not eligible for VRB, who have less than 2 years remaining on their enlistment, and for SCORE Program eligibility would have to reenlist before conversion to have the required 6 years of obligated service, are not eligible to receive VRB.

c. Reenlistments Within 3 Months After Separation From Active Service. When VRB-eligible personnel reenlist within 3 months after separation, VRB payment cannot be made until eligibility for the first-Regular Reenlistment Bonus is established. Procedures for establishing eligibility for the first-Regular Reenlistment Bonus are listed in paragraph 10902b of reference (e).

d. NESEP Candidates. Petty officers reenlisting to meet the minimum service requirements for NESEP, NENEP, or NEDEP, or for other programs leading to commissioned status, are not eligible for VRB for such reenlistment.

(1) In cases in which an extension will fulfill the minimum service requirements for NESEP, NENEP or NEDEP, eligible members may continue to receive annual VRB installments to which previously entitled under the current reenlistment contract if applicable.

(2) VRB payments for reenlistments contracted subsequent to NESEP, NENEP, or NEDEP application, but prior to selection for such training will be held in abeyance pending results of the selection process. Applicants not selected for training, and otherwise eligible, may receive VRB. Those selected will not receive VRB.

9. Reenlistment Interview. To attain the objectives of the VRB Program, each potential reenlistee who would

be eligible for the VRB, or may become eligible due to conversion or attainment of a new NEC, must be informed of his eligibility and the monetary benefits of the VRB Program.

a. The Reenlistment Interview, held 6 months before EAOS in accordance with reference (f), must cover the following additional subjects:

(1) VRB eligibility.
(2) Present reenlistment intentions.
(3) Amount of VRB for which potential reenlistee is currently eligible.
(4) VRB Program flexibility and possibility of changes which might increase or decrease the amount of bonus to which entitled at the time of reenlistment.
(5) Any limiting factor which could make VRB payment questionable.
(6) Advantages of early reenlistment to obtain present amount of VRB vice uncertainty of future value of the VRB.
(7) Normal VRB payment method of equal annual installments (see par. 10).
(8) Combat zone income tax exemption, if applicable (see par. 15).
(9) Possibility of payment in one lump sum if deemed desirable by the commanding officer in the particular case (see par. 10).

10. Method of Payment. The VRB is to be paid in equal annual installments in each year of the enlistment period. The first installment is to be paid upon reenlistment and subsequent installments on each succeeding anniversary during the new enlistment. It is emphasized that this is the *normal* method of payment provided for in the public law (Title 37, U.S. Code).

a. In especially meritorious cases, VRB can be * paid in one lump sum at the time of reenlistment, or the remaining amount after reenlistment. These methods require the approval of the Chief of Naval Personnel. Because of the impact that accelerated payments make on the funds allocated to the Navy for VRB, such awards can be made only to highly deserving personnel.

(1) In considering the submission of requests for lump-sum VRB payments, commanding officers are enjoined to keep in mind the joint objectives of the VRB Program and Reenlistment Quality Control. In consonance with these objectives, *it is appropriate that requests for lump-sum VRB payment be signed by the commanding officer in order to insure command's personal attention; however, this does not preclude command's authority to delegate.* Determination of meritorious payment is made only after careful review of the reasons for the request, the * applicant's performance record and disciplinary * history, and the commanding officer's recommendation.

* (2) Because of the frequent *changes in the VRB Program*, lump sum requests shall not be submitted more than 90 days prior to intended reenlistment. To permit payment at reenlistment, the request should be submitted 45 days in advance, or as soon thereafter as the reenlistment decision is made.

b. Requests for lump sum or remaining amount * payments are to be submitted to the Chief of Naval * Personnel (Pers-B221) in the format shown in enclosure (3). The reasons for submitting payment requests in this format are:

(1) To increase the commanding officer's role in the use of the VRB Program in pursuit of reenlistment objectives.
(2) To assist the commanding officer in pursuing Reenlistment Quality Control by providing a concise recap of the reenlistee's current record in the VRB Information Sheet.
(3) To reduce the overall processing time for requests.
(4) To reduce the number of erroneous VRB payments by generating increased awareness of the entitlement requirements.

c. If the individual's VRB is subject to Federal income tax and lump-sum payment is requested, the possible advantage of Income Averaging described in reference (g) should be explained to him.

d. The VRB Information Sheet in enclosure (3) is meant to serve as a quality control tool and reenlistment

checkoff guide to assist the commanding officer at the time of reenlistment. It provides the commanding officer a terse, capsule abstract portrayal of the prospective reenlistee's performance potential.

11. Personnel Office Procedures. Required service record entries, personnel diary entries, and substantiation procedures are described in enclosure (4). It is essential that commanding officers insure complete and accurate entries, as this information provides supporting data for budget requests to fund this program.

12. Disbursing Procedures. Disbursing procedures are described in chapter 9 of reference (e). Complete and accurate reporting is essential to provide data for budget justification. Attention is directed to paragraph 10931 of reference (e).

13. Nonapplicability of Reenlistment Bonus Limitation. The amount of VRB is not considered in the $2,000 limitation on the total amount of Regular Reenlistment Bonus which may be paid under paragraph 10906 of reference (c). However, this limitation does apply to the Regular Reenlistment Bonus amount used in computation of the VRB. Therefore, the maximum value for the VRB is $8,000 (maximum, multiple 4 times the $2,000 maximum Regular Reenlistment Bonus) and the maximum total bonus is $10,000.

14. Recoupment

a. Requirement. The unearned portion of the VRB payment already paid must be recouped when a member voluntarily or because of misconduct does not complete the term of enlistment, extension of enlistment or anniversary year for which the bonus was paid. Paragraph 10922 of reference (c) lists the specific circumstances which require recoupment. If a member who is entitled to VRB is receiving it in equal annual installments, and fails to complete his enlistment under conditions which do not require recoupment of the reenlistment bonus, the balance of the unpaid VRB installments remaining is payable in a lump-sum and is to be included in the final settlement of the pay account.

b. Recoupment Action by the Commanding Officer. A certificate (in triplicate) will be furnished the disbursing officer. (See par. 3840160 of ref. (d).)

c. Lump-Sum Payment Action by the Commanding Officer. A DD Form 114 (in triplicate) will be furnished to the disbursing officer. (See paragraph 10916 of reference (e).)

15. Withholding Tax

a. Reenlistment in Combat Zone. When the reenlistment for which VRB is payable occurs in a calendar month during any part of which the member served in a combat zone, or was hospitalized as a result of wounds, disease, or injury incurred while serving in a combat zone, the initial and subsequent installments are *not subject to withholding tax* and need not be reported as income subject to tax, regardless of when payment is made or where the member is then located.

b. Reenlistment Outside Combat Zone. If the reenlistment for which VRB is payable occurs in a month during no part of which the member served in a combat zone, then the VRB is subject to withholding tax and will be taxed in the same manner as the Regular Reenlistment Bonus, and each subsequent annual installment is subject to withholding tax and will be taxed in the year in which paid. *Even if payment of subsequent installments occurs while the member is in a combat zone, such installments are subject to withholding tax and must be reported as income subject to tax.*

16. Authorization

a. The Variable Reenlistment Bonus (VRB) is authorized by Section 308, Title 37, U.S. Code. The entitlements portion of the instruction was approved by

the DOD Military Pay and Allowances Committee under procedures prescribed by the Secretary of Defense, in accordance with Section 1001, Title 37, U.S. Code.

b. This instruction conforms with Secretary of Defense instructions specified in reference (a) and (b).

JOHN G. FINNERAN
Acting Deputy Chief of Naval Personnel

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VRB ELIGIBLE RATINGS WITH MULTIPLES

Effective 1 July 1972

RATING	MULTIPLE
Air Controlman (AC)	4
Aviation Fire Control Technician (AQ)	4
Aviation Electronics Technician (AT)	4
Aviation Anti-Submarine Warfare Operator (AW)	4
Aviation Anti-Submarine Warfare Technician (AX)	4
Boiler Technician (BT)	4
Communications Technician ("I" Branch) (CTI)	4
Communications Technician ("O" Branch) (CTO)	4
Communications Technician ("R" Branch) (CTR)	4
Communications Technician ("T" Branch) (CTT)	4
Data Systems Technician (DS)	4
Electrician's Mate (EM)	4
Engineman (EN)	4
Electronics Technician (ET)	4
Electronics Warfare Technician (EW)	4
Fire Control Technician (FT)	4
Gunner's Mate (TECH) (GMT)	4
Hull Technician (HT)	4
Interior Communications Electrician (IC)	4
Instrumentman (IM)	4
Machinist's Mate (MM)	4
Missile Technician (MT)	4
Ocean Systems Technician (OT)	4
Photo Intelligenceman (PI)	4
Radarman (RD)	4
Radioman (RM)	4
Sonar Technician (ST)	4
Torpedoman's Mate (TM)	4

RATING	MULTIPLE
Aviation Boatswain's Mate (Launching and Recovery Equipment) (ABE)	3
Aviation Electrician's Mate (AE)	3
Aviation Ordnanceman (AO)	3
Aviation Support Equipment Technician (AS)	3
Communications Technician ("A" Branch) (CTA)	3
Data Processing Technician (DP)	3
Gunner's Mate (Missiles) (GMM)	3
Mineman (MN)	3
Machinery Repairman (MR)	3
Opticalman (OM)	3
Photographer's Mate (PH)	3
Patternmaker (PM)	3
Quartermaster (QM)	3
Signalman (SM)	3
Tradesman (TD)	3
Aerographer's Mate (AG)	2
Aviation Structural Mechanic (AM)	2
Hospital Corpsman (HM)	2
Musician (MU)	2

Enclosure (1)

History of VRB Eligible Ratings/NECs and VRB Multiples Assigned

Rating	1/1/66	4/20/66	11/3/67	7/1/68	1/1/69	7/1/69	7/1/70	7/1/71	7/1/72
AC	-	-	-	1	1	3	4	4	4
AQ	3	4	4	4	4	4	4	4	4
AT	2	3	3	4	4	4	4	4	4
AW	-	-	-	-	4	4	4	4	4
AX	3	4	4	4	4	-	-	4	4
BT	2	3	3	4	4	4	4	4	4
CT	3	4	4	4	4	4	-	-	-
CTI	-	-	-	-	-	-	4	4	4
CTM	-	-	-	-	-	-	4	4	-
CTO	-	-	-	-	-	-	4	4	4
CTR	-	-	-	-	-	-	4	4	4
CTT	-	-	-	-	-	-	4	4	4
DC	-	2	2	4	4	4	4	4	-
DS	3	3	3	4	4	4	4	4	4
EM	1	3	3	4	4	4	4	4	4
EN	1	3	3	4	4	4	4	4	4
ET	3	4	4	4	4	4	4	4	4
EW	-	-	-	-	-	-	(9/1/71)4		4
FT	3	3	3	4	4	4	4	4	4
GMT	1	2	2	3	3	3	3	4	4
HT	-	-	-	-	-	-	(1/1/72)4		4
IC	2	3	3	4	4	4	4	4	4
IM	-	-	-	2	2	2	2	4	4
MM	1	3	3	4	4	4	4	4	4
MT	1	2	2	2	-	-	-	4	4
OT	-	-	-	-	-	-	(9/1/70)4		4
PT	4	4	4	4	4	4	4	4	4
RD	3	3	3	4	4	4	4	4	4
RM	2	3	3	4	4	4	4	4	4
SF	-	2	2	4	4	4	4	4	-
ST	4	4	4	4	4	4	4	4	4
TM	1	2	2	3	3	3	3	3	4
ABE	-	-	-	-	-	-	-	-	3
AE	-	2	2	3	3	3	3	3	3
AO	-	2	2	3	3	3	3	3	3
AS	-	-	-	-	-	-	-	3	3
CTA	-	-	-	-	-	-	3	3	3
DP(MA)	2	3	3	4	4	4	4	3	3
GMG	-	2	2	3	3	3	3	-	-
CMM	-	-	-	-	-	-	-	3	3
MN	-	-	-	-	-	-	-	-	3

Rating	1/1/66	4/20/66	11/3/67	7/1/68	1/1/69	7/1/69	7/1/70	7/1/71	7/1/72
MR	-	2	2	3	3	3	3	3	3
OM	1	2	2	3	3	3	3	3	3
PH	-	-	-	-	-	-	-	3	3
PM	-	1	1	1	1	1	3	3	3
QM	1	3	3	4	4	4	3	3	3
SM	1	2	2	3	3	3	3	3	3
TD	-	-	-	-	-	-	3	3	3
AG	-	1	1	1	1	1	2	2	2
AM	-	1	1	1	1	1	2	2	2
HM	-	-	-	-	-	-	-	2	2
HM NECs									
8404	-	-	2	2	-	-	-	-	-
8405	-	-	2	2	-	-	-	-	-
8406	-	-	2	2	2	2	2	-	-
8409	-	-	2	2	-	-	-	-	-
8412	-	-	-	-	-	-	2	-	-
8413	-	-	2	2	-	-	-	-	-
8414	-	-	-	-	-	-	2	-	-
8416	-	-	-	-	-	-	2	-	-
8417	-	-	2	2	-	-	2	-	-
841X	-	-	-	-	-	2	-	-	-
8432	-	-	2	2	2	2	2	-	-
8483	1	1	1	2	-	-	-	-	-
8484	-	-	2	2	-	-	-	-	-
8488	-	-	-	2	-	-	-	-	-
8489	-	-	2	2	-	-	-	-	-
8492	-	-	2	2	2	2	2	-	-
8493	-	-	2	2	2	2	2	-	-
8498	-	-	2	2	2	-	-	-	-
BU	-	2	2	2	2	2	2	-	-
CE	-	2	2	2	2	2	2	-	-
CM	-	2	2	2	2	2	2	-	-
DK	-	-	-	2	2	2	2	2	-
EA	1	2	2	2	2	2	2	-	-
EO	-	2	2	2	2	2	2	-	-
SW	-	2	2	2	2	2	2	-	-
UT	-	2	2	2	2	2	2	-	-
CS	-	1	1	1	1	1	1	-	-
SK	-	1	1	1	1	1	1	-	-

BUPERSINST 1133.18E
23 March 1972
DD 666:SG:ab
1133
Ser:
Date

From: Commanding Officer, USS NEVERSAL (DD 666)

To: Chief of Naval Personnel (Pers-B221)

Subj: Lump-sum Request for VRB for QM2 John J. DOE, USN, 459 58 5919 (0215/0000)

Ref: (a) Authority for Reenlistment (BUPERS Instruction, message or letter)
(b) BUPERSMAN 1040300
(c) BUPERSINST 1133.18E
(d) Federal Income Tax Information for Armed Forces Personnel (NAVSO P-1983 series)

Encl: (1) VRB Information Sheet (Not required from Recruiting Stations)
(2) Certification of Eligibility for VRB from Disbursing Officer holding Pay Record
(3) Certified copy of current Enlisted Performance Record (Page 9)

1. In accordance with references (a) and (b), I intend to reenlist/I reenlisted QM2 John J. DOE on board on 30 July 1969 for ———. Authority for lump-sum payment on date of reenlistment/remaining amount of VRB is requested. Enclosure (1) verified eligibility for VRB.

2. Enclosure (2) is forwarded in accordance with reference (c). The information contained therein has been verified and is certified correct.

3. Petty Officer DOE has not applied for and states that he does not plan to apply for the NESEP, NENEP or NEDEP Programs prior to reenlistment.

4. Petty Officer DOE will be (has been) briefed on the effect of increased annual income on tax obligation and

the possible advantage of Income Averaging as described in reference (d).

5. (Commanding officer's recommendation and statement of the meritorious reason(s) for the request for lump-sum authority, including the candidate's intended use of the funds and comments on his current financial situation as it relates thereto.)

(Signature)*

* It is appropriate that this be the commanding officer's signature in order to ensure command's personal attention; however, this does not preclude command's authority to delegate.

BUPERSINST 1133.18E
23 March 1972

VARIABLE REENLISTMENT BONUS INFORMATION SHEET

NAME ———— RATE/NEC —— SER NO. ——

1. Date of birth: 14 May 1941

2. Date of current enlistment: 1 July 1966

3. Length of current enlistment: 4 years

4. Date commenced current tour of active duty: 1 July 1966

5. Expiration of Active Obligated Service (as extended): 30 SEP 1972

6. Extensions of Active Obligated Service: (indicated number of extensions, term of extension and reason):

a. FIRST, 2 years, SET Program; b. SECOND, 3 months, advancement to PO1.

7. Periods of previous military service:

Branch/Class	Enlisted	Discharged	Active Duty
USMC	1 JUN 63	31 MAY 65	ALL
USNR	1 JUN 65	30 JUN 66	1 JAN 66 - 14 JAN 66

8. Overall trait average of performance marks from last completed enlistment: 3.51 (if already reenlisted)

9. Performance marks from current enlistment. Enclose a certified copy of current Enlisted Performance Record (Page 9), or list marks as indicated below:

Date	Professional Performance	Military Behavior	Leadership and Supervisory Ability	Military Appearance	Adaptability
16 DEC 66	3.4	3.6	N.O.	3.6	3.6
16 JUN 67	3.6	3.6	3.4	3.8	3.6

10. Awards/Citations authorized:

11. Letters of Commendation awarded:

12. Disciplinary Record:

a. Civil Offenses:

Date	Offense	Disposition
29 FEB 68	Traffic Violation	Fined $50.00

b. Military Offenses:

Date	Offense	Disposition
17 SEP 68	UA 9 hours	NJP-14 days restriction

NOTE: Recruiting Stations are not required to complete this Information Sheet.

VRB ELIGIBILITY CERTIFICATION

QM2 John J. DOE, USN, 459 58 5191 ($215/0000) is eligible in all respects to receive VRB in accordance with DODPM Articles 10911 through 10915. The provisions of Navy and Marine Corps Military Pay Procedures, Chapter 9, have been complied with regarding verification of prior bonus payment.

(signature)
(command)
(Disbursing Number)

BUPERSINST 1133.18E
23 March 1972

PERSONNEL OFFICE PROCEDURES

1. *Service Record.* The commanding officer shall cause the following certification to be entered on Page 5 and Page 13 of the reenlistee's service record:

a. "(Effective Date). Reenlisted (extended) this date, entitled to Regular Reenlistment Bonus, and to VRB based on —— rating/NEC and VRB multiple ——. The VRB to be paid in ——— installments commencing this date." This action, combined with appropriate personnel diary entries, will certify entitlement to the VRB. Payment is to be authorized and substantiated by a Military Pay Order (DD Form 114) in accordance with paragraph 2 below.

b. Upon receipt of the DD Form 114, endorsed by the disbursing officer to show the amount paid (see reference (e)), add the following entry to the foregoing certification:

"Total VRB entitlement $——— 1st of —— installments of $——— on (date)".

c. Subsequent installments are to be entered on the Pages 5 and 13 as: "Paid (2nd, 3rd, final, etc) VRB Installment of $——— on (date)."

2. *Substantiation.* Credit of VRB is to be substantiated by a Military Pay Order (DD Form 114) provided to the disbursing officer at the same time as the documents establishing entitlement to the first Regular Reenlistment Bonus. The DD Form 114 (in triplicate) must show the following:

a. Eligible VRB rating/NEC in which reenlisted.
b. VRB multiple.
c. Number of annual installments in which VRB is to be paid.
d. Authority for payment, if paid in fewer than annual installments throughout the enlistment period.
e. Statement as to combat zone tax exemption of VRB, if applicable (see paragraph 15a).

3. *Service Record Entries for SCORE Reenlistees.* In cases involving personnel becoming eligible for the VRB

under the provisions of the SCORE Program, make the following service record entries:

a. "(Effective date). Agreed to reenlist (extend) for a period of —— years for purpose of SCORE conversion from (present rate) to (conversion rate) in accordance with BUPERSMAN 1060010 and entitled to the benefits therein. Conversion trainee NEC XX-XX99 will be assigned by BUPERS. If entitled to first Regular Reenlistment Bonus, and if successful conversion accomplished prior to entering into an extension of enlistment, (member) will be entitled to VRB for (conversion rating) based on the VRB multiple authorized at the time of reenlistment or on * the operative date of a bonus length extension."

b. Upon meeting all requirements for the VRB and upon reenlistment, the standard VRB service record entry above is to be utilized. If the petty officer's conversion rating has been removed from VRB eligibility at the time of reenlistment, the VRB shall not be paid. In this event, no additional service record entry is required.

4. *Personnel Diary Entries.* Correct, timely diary entries are essential. Diary reenlistment entries are the primary source of the monitoring information required by the Bureau of Naval Personnel. Personnel diary entries for the VRB reenlistments are to be made by adding VRB multiple (VRBM) and VRB installment (VRBI) to applicable reenlistment (operative extension) entry prescribed in chapter 5 of reference (h).

Example: (reenlistment entry)

"REENLISTED —————— ON BOARD FOR DUTY. VRBM-3 VRBI-4"

Example: (operative extension)

"CH ACDUOBLI FROM: 15 JAN 68 24 00
TO: 15 JAN 70 00 00
REASON: EXPIRATION OF ENLISTMENT DATE CHANGED . . . . FOR 24 MOS. VRBM-3 VRBI-2"

DEPARTMENT OF THE NAVY
Bureau of Naval Personnel
Washington, D.C. 20370

BUPERSINST 1133.18E CH-2
Pers-B2212
22 March 1973

BUPERS INSTRUCTION 1133.18E
CHANGE TRANSMITTAL 2

From: Chief of Naval Personnel

To: All Ships and Stations (less Marine Corps field addresses not having Navy personnel attached)

Subj: Variable Reenlistment Bonus (VRB) Program

Encl: (1) VRB eligible ratings/NEC's with multiples effective 1 July 1973

(2) History of VRB eligible ratings/NEC's and VRB multiples assigned

(3) Brief sheet (detach and utilize as appropriate, then destroy)

1. Purpose. To transmit change 2 to the basic instruction.

2. Action. On 1 July 1973, remove existing enclosures (1) and (2) to the basic instruction and substitute revised enclosures (1) and (2), appended hereto.

ROBERT B. BALDWIN
Deputy Chief of Naval Personnel

Distribution:

SNDL Parts 1 and 2

Stocked:

COMMNAVDIST WASH DC
(Supply & Fiscal Dept.—Code 514.3)
Wash. Navy Yard
Wash., D.C. 20374

VRB ELIGIBLE RATINGS WITH MULTIPLE

Effective 1 July 1973

RATING	MULTIPLE
AC	4
AQ	4
AW	4
BT	4
CTO	4
*EA	4
EW	4
GMT	4
HT	4
IC	4
IM	4
MM	4
OS	4
OT	4
PT	4
RM	4
ST	4
TM	4
NECs	
3351	4
3353	4
3354	4
3355	4
3356	4
3359	4
3361	4
3363	4
3364	4
3365	4
3366	4
3383	4
3384	4
3385	4
3386	4
3389	4
3393	4
3394	4
3395	4
3396	4
ABE	3
AE	3
*AG	3
AT	3
*BU	3
*CE	3
*EM	3
*EN	3
*FTG	3
*JO	3
MN	3
MR	3
OM	3
PH	3
PM	3
QM	3
SM	3
*UT	3
AMH	2
AO	2
*AS	2
*AX	2
*CTA	2
CTI	2
CTT	2
*DM	2
DP	2
DS	2
ET	2
FTB	2
FTM	2
*ML	2
MU	2
*SW	2
*TD	2
*ABF	1
*ADJ	1
*BM	1
*DT	1
*GMM	1
*HM	1
*LN	1
*PN	1
*YN	1

* Indicates VRB multiple changes or ratings added to list 1 July 1973

History of VRB Eligible Ratings/NECs and VRB Multiples Assigned Since 1 July 1968

Rating	7/1/68	1/1/69	7/1/69	7/1/70	7/1/71	7/1/72	11/1/72	7/1/73	
AC	1	1	3	4	4	4	4	4	
AQ	4	4	4	4	4	4	4	4	
AW	-	4	4	4	4	4	4	4	
BT	4	4	4	4	4	4	4	4	
CTO	-	-	-	4	4	4	4	4	
EA	2	2	2	2	-	-	-	4	*
EW	-	-	-	-	4	4	4	4	
GMT	3	3	3	3	4	4	4	4	
HT	-	-	-	-	4	4	4	4	
IC	4	4	4	4	4	4	4	4	
IM	2	2	2	2	4	4	4	4	
MM	4	4	4	4	4	4	4	4	
OS	4	4	4	4	4	4	4	4	
OT	-	-	-	-	4	4	4	4	
PT	4	4	4	4	4	4	4	4	
RM	4	4	4	4	4	4	4	4	
ST	4	4	4	4	4	4	4	4	
TM	3	3	3	3	3	4	4	4	
NEC's									
3351	-	-	-	-	-	-	4	4	
3353	-	-	-	-	-	-	4	4	
3354	-	-	-	-	-	-	4	4	
3355	-	-	-	-	-	-	4	4	
3356	-	-	-	-	-	-	4	4	
3359	-	-	-	-	-	-	4	4	
3361	-	-	-	-	-	-	4	4	
3363	-	-	-	-	-	-	4	4	
3364	-	-	-	-	-	-	4	4	
3365	-	-	-	-	-	-	4	4	
3366	-	-	-	-	-	-	4	4	
3383	-	-	-	-	-	-	4	4	
3384	-	-	-	-	-	-	4	4	
3385	-	-	-	-	-	-	4	4	
3386	-	-	-	-	-	-	4	4	
3389	-	-	-	-	-	-	4	4	
3393	-	-	-	-	-	-	4	4	
3394	-	-	-	-	-	-	4	4	
3395	-	-	-	-	-	-	4	4	
3396	-	-	-	-	-	-	4	4	
ABE	-	-	-	-	-	3	3	3	
AE	3	3	3	3	3	3	3	3	
AG	1	1	1	2	2	2	2	3	*
AT	4	4	4	4	4	4	3	3	

Rating	7/1/68	1/1/69	7/1/69	7/1/70	7/1/71	7/1/72	11/1/72	7/1/73
*BU	2	2	2	2	-	-	-	3
*CE	2	2	2	2	-	-	-	3
*EM	4	4	4	4	4	4	4	3
*EN	4	4	4	4	4	4	4	3
*FTG	4	4	4	4	4	4	4	3
*JO	-	-	-	-	-	-	-	3
MN	-	-	-	-	-	3	3	3
MR	3	3	3	3	3	3	3	3
OM	3	3	3	3	3	3	3	3
PH	-	-	-	-	3	3	3	3
PM	1	1	1	3	3	3	3	3
QM	4	4	4	3	3	3	3	3
SM	3	3	3	3	3	3	3	3
*UT	2	2	2	2	-	-	-	3
AMH	1	1	1	2	2	2	2	2
AO	3	3	3	3	3	3	2	2
*AS	-	-	-	-	3	3	3	2
*AX	4	4	-	-	4	4	4	2
*CTA	-	-	-	3	3	3	3	2
CTI	-	-	-	4	4	4	2	2
CTT	-	-	-	4	4	4	2	2
*DM	-	-	-	-	-	-	-	2
DP	4	4	4	4	3	3	2	2
DS	4	4	4	4	4	4	2	2
ET	4	4	4	4	4	4	2	2
FTB	4	4	4	4	4	4	2	2
FTM	4	4	4	4	4	4	2	2
*ML	-	-	-	-	-	-	-	2
MU	-	-	-	-	-	2	2	2
*SW	2	2	2	2	-	-	-	2
*TD	-	-	-	3	3	3	3	2
*ABF	-	-	-	-	-	-	-	1
*ADJ	-	-	-	-	-	-	-	1
*BM	-	-	-	-	-	-	-	1
*DT	-	-	-	-	-	-	-	1
*GMM	-	-	-	-	3	3	2	1
*HM	-	-	-	-	2	2	2	1
HM NECs								
8404	2	-	-	-	-	-	-	-
8405	2	-	-	-	-	-	-	-
8406	2	2	2	2	-	-	-	-
8409	2	-	-	-	-	-	-	-
8412	-	-	-	2	-	-	-	-
8413	2	-	-	-	-	-	-	-
8414	-	-	-	2	-	-	-	-
8416	-	-	-	2	-	-	-	-

Rating	7/1/68	1/1/69	7/1/69	7/1/70	7/1/71	7/1/72	11/1/72	7/1/73	
8417	2	-	-	2	-	-	-	-	
841X	-	-	2	-	-	-	-	-	
8432	2	2	2	2	-	-	-	-	
8483	2	-	-	-	-	-	-	-	
8484	2	-	-	-	-	-	-	-	
8488	2	-	-	-	-	-	-	-	
8489	2	-	-	-	-	-	-	-	
8492	2	2	2	2	-	-	-	-	
8493	2	2	2	2	-	-	-	-	
8498	2	2	-	-	-	-	-	-	
LN	-	-	-	-	-	-	-	1	*
PN	-	-	-	-	-	-	-	1	*
YN	-	-	-	-	-	-	-	1	*
AME	1	1	1	2	2	2	2	-	*
AMS	1	1	1	2	2	2	2	-	*
CM	2	2	2	2	-	-	-	-	
CT	4	4	4	-	-	-	-	-	
CTM	-	-	-	4	4	-	-	-	*
CTR	-	-	-	4	4	4	2	-	*
CS	1	1	1	1	-	-	-	-	
DC	4	4	4	4	4	-	-	-	
DK	2	2	2	2	2	-	-	-	
EO	2	2	2	2	-	-	-	-	
GMG	3	3	3	3	-	-	-	-	
MT	2	-	-	-	4	4	2	-	*
SK	1	1	1	1	-	-	-	-	
SF	4	4	4	4	4	-	-	-	

Notes:

Asterisk (*) Indicates VRB additions, deletions, or changes in multiples over the fiscal year 1973 VRB program.

Dash (-) Indicates multiple of zero, not VRB eligible.

FOR YOUR INFORMATION

FISCAL YEAR 1974 VRB PROGRAM

A study of the current manning levels has produced the following changes in the VRB Program for fiscal year 1974

THE FOLLOWING RATINGS WILL BE ADDED TO THE VRB ELIGIBILITY LIST EFFECTIVE 1 JUL 1973

Rating	Multiple	Rating	Multiple	Rating	Multiple	Rating	Multiple
EA	4	UT	3	ABF	1	LN	1
BU	3	DM	2	ADJ	1	PN	1
CE	3	ML	2	BM	1	YN	1
JO	3	SW	2	DT	1		

THE FOLLOWING RATING WILL BE UPGRADED FROM VRB MULTIPLE 2 TO VRB MULTIPLE 3 EFFECTIVE 1 JULY 1973

AG

THE FOLLOWING RATINGS WILL BE DOWNGRADED TO VRB MULTIPLES INDICATED EFFECTIVE 1 JULY 1973

Rating	Multiple	Rating	Multiple	Rating	Multiple	Rating	Multiple
*EM	3	FTG	3	AX	2	TD	2
*EN	3	AS	2	CTA	2	GMM	1
						HM	1

(* Except nuclear propulsion plant operator NECs)

THE FOLLOWING RATINGS WILL BE DELETED FROM THE VRB ELIGIBLE LIST EFFECTIVE 1 JULY 1973. EFFECTIVE IMMEDIATELY, IF YOU ARE IN ONE OF THE DELETED RATINGS, YOU MAY NOT REENLIST EARLY (INCLUDING WITHIN 3 MONTHS OF EAOS) TO ESTABLISH VRB ELIGIBILITY.

AME AMS CTR MT

EFFECTIVE IMMEDIATELY, MEMBERS OF ALL RATINGS LISTED ABOVE REENLISTING EARLY (INCLUDING WITHIN 3 MONTHS OF EAOS) TO ESTABLISH VRB ELIGIBILITY ARE NOT ELIGIBLE FOR THE HIGHER AWARD LEVEL.

Check with you Career Counsellor or Division Petty Officer for details.

BUPERSINST 1133.18E CH-2 of 22 March 1973

Display on Bulletin Board and Publish as Appropriate, then Destroy

Inclusion in Plan of the Day Notes is Recommended

C-1407. EXTENSIONS OF ENLISTMENTS

NOTE ABOUT C-1407—This and art. C-1403 being held in abeyance by BPI 1133.16 for Steward Rating Group for those who on current EAOS would approach, complete or exceed 20 (19 and 6) years of active service.

(1) *Definitions.* In the discussion of extensions of enlistments in this article, the following definitions are applicable:

(a) "Agreement to Extend Enlistment" or "Enlistments as extended"—Whenever these terms are used, the legal form of agreement (Page 1A of the service record (NAVPERS 601-1A/NAVCOMPT 513)) is meant and not an unofficial agreement or personal assurance of intention to extend. Agreements on other than the legal form are of an informal and unofficial nature and could be repudiated or withdrawn by the individual.

(b) When the phrase "Execution of the Agreement to Extend Enlistment" appears, this refers to the administering of the oath and signing of the authorized form by the member concerned and the witnessing of the signature by the appropriate commissioned officer. (See Article B-2305(4).)

(c) "Extension becomes Operative"—This refers to the date on which the Extension of Enlistment goes into effect and service thereunder commences. Unless cancelled prior thereto under any one of the conditions set forth in paragraph (8) below, an Agreement to Extend Enlistment executed during an enlistment or an enlistment as extended becomes operative on the date next following the normal date of expiration of enlistment, or the date of expiration of enlistment as voluntarily extended or as extended for the purpose of making up time not served, as appropriate.

(2) *Terms of Extensions.* Following are the general terms and conditions under which Regular Navy and Naval Reserve personnel serving on active duty are permitted to extend their enlistments. (The Bureau directives system should be consulted for special instructions regarding extensions.)

(a) *General Instructions.* Except as otherwise provided herein, enlisted personnel, *who are serving under an enlistment * contract,* may extend or re-extend their enlistments, by their voluntary agreement, subject to approval by their commanding officer, regardless of whether serving in first or subsequent enlistment. Extensions may be for any period of months not to exceed an aggregate of 48 months on any single enlistment. See subparagraph (b) below for restrictions on extensions of less than one year. Personnel not eligible for reenlistment may not extend their enlistments without prior approval of the Chief of Naval Personnel. Commanding officers should set forth all pertinent facts and their recommendation on the forwarding endorsement to the request for such approval. Former USN personnel who have been transferred to the Naval Reserve and who have in fact been released from active * duty to complete their Military Selective Service obligation and who return to active duty voluntarily or by recall, are not eligible to execute an extension of enlistment contract. Such personnel must reenlist if they need or desire to acquire obligated service (see Arts. H-3406 & H-3407(2)). No such restriction applies to personnel who, prior to their release, indicate a desire to remain on active duty and who need to extend their enlistment contract. USNR personnel in the latter category may need an extension of enlistment contract and an active duty agreement (see Art. C-1407A). At no time may an extension of enlistment contract be executed for the purpose of extending an enlistment or enlistment as extended which has already expired. Personnel who are in receipt of authorization for transfer to the Fleet Reserve may not extend their enlistments without specific authority of the Chief of Naval Personnel. Extension of enlistment subsequent to transfer to the Fleet Reserve is not appropriate since such persons are not serving in an enlistment contract. (Similar restrictions on reenlistment of such personnel are contained in Article C-1403.) Personnel under 18 years of age may not execute agreements to extend their enlistments. Extensions of enlistments for periods of less than one year are authorized for Regular Navy personnel

subect to the restrictions contained in subparagraph (b) below.

(b) *Extensions for less than one year.* Enlisted personnel serving on active duty are authorized to execute agreements to extend their enlistments for less than one year under the following conditions:

1. Must meet qualifications for reenlistment set forth in Article C-1403.
2. Must execute agreements to extend in increments of one or more months but not more than 11 months.
3. Total of all extensions of a single enlistment must not exceed an aggregate of * 48 months.
4. Personnel on sea duty may not extend more than once for less than a year on one enlistment except to complete a cruise or deployment or to obtain sufficient obligated service for advancement to Pay Grade E-5 or above. (In other cases, the request of an individual to execute a second extension of less than a year should be forwarded to the Chief of Naval Personnel for consideration.)
5. Personnel on sea duty must have more than 6 months remaining on their present enlistments, or enlistments as extended, unless the individual concerned desires to extend to complete a cruise or deployment or to obtain sufficient obligated service for advancement to Pay Grade E-5 or above.
6. In order not to disrupt the normal Seavey/Shorvey rotation, individuals on shore duty shall not be permitted to execute short extensions after their shore tour completion date has been established, without specific permission from the Chief of Naval Personnel.

See Article C-10317 for provisions authorizing separation upon completion of a cruise or deployment of those persons who extended their active obligated service for the express purpose of participating in and completing the cruise or deployment.

(3) *Execution of Agreement to extend.*

(a) *General.* In order to be considered legal and binding, pertinent portions of the Agreement to Extend Enlistment must be filled in as shown in Exhibit 1A-1 of Article B-2311 and signed by both the individual and the

commissioned officer administering the oath on or prior to expiration of enlistment. Forward to the Chief of Naval Personnel the appropriate copy of the Extension Form, as required in Article B-2311. *Agreements entered into subsequent to the date of expiration of enlistment are without legal force and effect.* The following time limits for executing agreement to extend will govern:

Conditional agreements to extend, such as qualifying for advancement, for a cruise or deployment, for entrance into a service school, for any special program, or for any other duty requiring additional obligated service, may be executed at any time during an enlistment. The reason for extension will be entered on page 1A in accordance with the applicable directive.

NOTE: Agreements to extend enlistments may NOT be conditioned upon assignment to a specific area or duty station, but shall be for a general area, i.e., "overseas", "Continental U.S." as applicable and as prescribed in the Enlisted Transfer Manual, NAVPERS 15909 (series), or as specifically authorized by the Chief of Naval Personnel.

Unconditional agreements to extend enlistment may be executed as follows:

* *Twelve month extensions*—Not more than three months nor less than one month preceding expiration of enlistment.

* *Twelve to forty-eight month extensions*—At any time within three months of expiration of enlistment.

The following will be shown as Reason for Extension on page 1A in all unconditional extensions: "To continue career. I understand that this extension becomes binding upon execution and may not thereafter be cancelled except as provided in Article C-1407(8)(b)." Insure prompt submission of availability report in these cases in accordance with Enlisted Transfer Manual, paragraph 7.44.

(See Article C-1403 with regard to discharge and reenlistment of personnel ineligible to re-extend).

(b) *Short Extensions.* Individuals qualified to extend their enlistment for less than one year will execute an Agreement to Extend Enlistment (page 1A) as shown in Exhibit 1A-1 of Article B-2311, showing the number of *months* for which the enlistment * is extended. Reenlistment bonus is not payable until the extension becomes operative which, when added to the previous extension of the same enlistment, totals two years or more (DODPM). Since extensions of enlistment for periods of less than one year must be made at least six months preceding expiration of enlistment except to complete a cruise or deployment (Art. C-1407(2)(b)), the applicable reason must be set forth on the page 1A as set forth in (a) above. When more than one extension is required to be executed in accordance with the above in order to obtain sufficient obligated service, the same reason for extension will be entered on both pages 1A.

(4) *Completion of Form.* At the time the extension becomes operative or as soon thereafter as practicable, the remaining portions of the Agreement to Extend Enlistment form shall be completed (See Exhibit 1A-2, Article B-2311). It should be noted that even though this part of the Extension form is not completed at the proper time, the legality is not affected and the operative date is not changed.

(5) *General Requirements.*

(a) *Physical Examination.* A physical examination is required for extension of enlistment as for reenlistment, and should be conducted just prior to and as near the effective date of the extension as practicable. Physical examinations for this purpose shall be conducted by naval medical and dental officers, if available, otherwise by medical and dental officers of the Department of the Army or of the Department of the Air Force. When medical officers of the Department of Defense are not available, provided there is no evidence in the member's health record of recent illness or injury, waiver of physical examination is authorized. However, physical examination by Department of Defense Medical Officer will be obtained at the earliest available opportunity at no cost to the Government. Appropriate notation will be

made in member's service record to insure that requirement for physical examination is not overlooked.

* (b) *Armed Forces Security Questionnaire.* Execution of the Armed Forces Security Questionnaire (DD Form 98) shall be accomplished in accordance with pertinent directives.

(6) Certain provisions of law provide for the extension of an enlistment beyond the normal date of expiration thereof whether or not the person concerned has executed an agreement to extend his enlistment. (See article C-10304.)

(7) For information concerning extensions of enlistments of married personnel in pay grades E3 and E4 see article C-1403.

(8) *Cancellation of Extensions.*

(a) Provisions are contained herein for cancellation of agreements to extend enlistments under certain specified conditions. In all cases of cancellation of an extension agreement, notation of the cancellation shall be made on parts 1 and 3 of the page 1A (See Exhibit 1A-3, Article B-2311). Part 1 shall be forwarded to the Chief of Naval Personnel. Part 3 shall be filed in the individual's service record and parts 2 and 4 shall be destroyed. It is emphasized that a valid extension of enlistment that has become operative cannot be cancelled. Requests or recommendations for cancellation of agreements to extend enlistments which have not become operative and for which authorization is not provided below and which appear meritorious, shall be forwarded to the Chief of Naval Personnel for determination.

(b) Commanding officers *shall* cancel agreements to extend enlistment, prior to operative date, in the following cases:

1. When an individual is on unauthorized absence on date his enlistment would otherwise expire, unless it is considered by the commanding officer that intention to absent himself was for the purpose of abrogating the agreement to extend.

2. When closing out an individual's record because of desertion.

3. When orders for discharge are issued prior to expiration of enlistment (date of cancellation to be date of issue of orders for discharge).

4. Except as provided in subparagraph 5 below, when an individual, through no fault of his own, has not received any of the benefits for which the extension was executed by the day next preceding the operative date of the extension. Thus, if a member executed an agreement to extend enlistment and has been ordered or assigned to duty, such as duty ashore, overseas service, or any special program, for which he agreed to extend or has had his tour date adjusted, been advanced, or has received any benefits therefrom, by the day next preceding the date the extension would become operative, the agreement to extend enlistment may not be cancelled. Members whose extensions are cancelled pursuant to the above who desire to continue on active duty may simultaneously therewith execute new extension or reenlist in accordance with applicable directives notwithstanding the time limits specified in Art. C-1407(3)(a). In such cases if the individual executes a new extension, show as a reason "To continue career."

5. When appropriate in the case where an individual is disenrolled from a specialized course of instruction as provided in Article D-2305. Cite Article C-1407(8)(b)(5) as cancellation/re-execution authority.

6. When an individual reenlists or agrees to extend enlistment under BuPers Manual Articles C-1403, C-10317, (Reenlistment) or Article C-1407 (Extension) or applicable directives. Reenlistment or extension must be for an authorized period but not less than the term of the extension agreement(s) being cancelled. The extension agreement(s) shall then be cancelled as of the date of reenlistment or execution of new extension.

7. When an individual, upon being physically examined for the extension, is found to be not physically qualified for retention in the service regardless of the reason for which the extension was executed. In such case the individual shall be transferred to a Naval Hospital for treatment and disposition. *Retention of such persons beyond normal expiration of enlistment will be*

pursuant to Article C-10304(5)(e). Personnel so retained are not eligible to execute extensions of enlistment; however, they may be reenlisted while in a patient status as provided in Article C-1403(8). (An individual undergoing treatment in a hospital on expiration of his enlistment, and whose extension agreement was not cancelled prior to its operative date, is not entitled to reenlistment allowances by reason of extension unless and until returned to duty.)

* 8. When an individual is no longer recommended for reenlistment for failure to meet the minimum standards for reenlistment or his performance of duty or conduct is unsatisfactory and the Commanding Officer feels that he lacks career potential. Full entry of the facts shall be included in page 13 service record entry as required by Article C-10103(2)(c) with notation that the individual is not recommended for reenlistment.

ADMINISTRATIVE REMARKS

See Art. B-2305, BuPers Manual

SHIP OR STATION

NAVAL SCHOOLS COMMAND, NORFOLK, VIRGINIA

0 9 APR 1971 : Earned NEC 2342 recommended t CHNAVPERS based on graduation from Teletype Maintenance (MOD 28 ASR) Course (A-160-0044). CDP Code 3189.

L. M. DI VIZIO, LTJG, USN
REPRODUCTION OF CO

NAVAL SCHOOLS COMMAND, NORFOLK, VIRGINIA 23511

3 0 APR 1971 : Earned NEC 2316 recommended to CHNAVPERS based on graduation from Low Level Keying Teletype Maintenance Course (A-160-0053), CDP Code 3259.

L. M. DI VIZIO, LTJG, USN
REPRODUCTION OF CO

NAME (Last, First, Middle) LARIONOFF, NICHOLAS JOHN, JR.

SERVICE NO 817 77

U...

ADMINISTRATIVE REMARKS—NAVPERS 601-13 (Rev. 12-61)

S/N 0106-006-2300

U.S. GOVERNMENT PRINTING OFFICE: 1969-393-705 5-44

13

TRANSFERS AND RECEIPTS

9ND NTC 1306/66 (12-67)

*See Art. B-2305, BuPers Manual

SHIP OR STATION: NTC GREAT LAKES, ILL

NO. MOS. EFFED THIS COMMAND: NONE

AUTH: BUPERS TC 173

NAME (Last, first, middle)	SERVICE NO.	RATE	BRANCH AND CLASS
LARIONOFF NICHOL	B177788	CTM3	USN

ACTIVITY TO WHICH TRANSFERRED: CO, XXXXX NSGA SKAGGS IS

PURPOSE OF TRANSFER (Duty, Instruction, etc.): FOR DUTY SHORE

DATE TRANSFERRED: 17 JUL 70

SIGNATURE AND RANK: E H HORNUNG CWO2 USN ASST PERS OFF BY DIR OF CNTC

FOR USE OF INTERMEDIATE REPORTING STATIONS (If necessary): ORDERS MODIFIED TO SVC MBR WHILE IN LEAVE STATUS TO RPT NAVSECSTAWASHDC VICE CO NGSA, SKAGGS ISL CALIF.

REPORTED AT (Ultimate destination)	DATE REPORTED	SIGNATURE AND RANK*
NAVAL SECURITY STATION WASHINGTON, D.C. 20390	1746 04 AUG 70	R. HECKHAUS, CWO2, USN Assistant Personnel Officer By direction of the C.O.

DATE TRANSFERRED	NO. MOS. S/FSD THIS COMMAND	ACTIVITY TO WHICH TRANSFERRED
07 FEB 71	- - - - - - - - - - -	CO, NAVAL SCHOOLS COMMAND, NORVA. FOR TEMPORARY ADDITIONAL DUTY UNDER INSTRUCTION FOR COURSE

RATE	PURPOSE OF TRANSFER (Duty, Instruction, etc.)
CTM3	A-160-00-24, MOD ASR 28 TELETYPE MAINTENANCE CLASS CONVEN 8 FEB 71 FOR 9 WEEKS & COURSE A-160-00-53(LOW LEVEL TTY)CLASS CONVEN 12 APRIL 71 FOR 3 WEEKS

AUTH: ENLISTED TRANSFER MANUAL, CHAPTER 23 BUPERS ltr Pers-B2166-tjc-14/40 of5NOV70

SIGNATURE AND RANK*: R. HECKHAUS, CWO2, USN ASST PERS OFF BY DIR OF THE C.O.

FOR USE OF INTERMEDIATE REPORTING STATIONS (If necessary): NAVSCOLCOM, NORVA REPORTED: 1543, 07 FEB 71 DEPARTED: 0600, 30 APR 71

J. M. DI VIZIO, LTJG, USN PERS OFF, BY DIR OF C.O.

REPORTED AT (Ultimate destination)	DATE REPORTED	SIGNATURE AND RANK*
NAVAL SECURITY STATION WASHINGTON, D.C. 20390	1209 30 APR 71	J. R. [illegible], CWO2, USN ASSISTANT PERSONNEL OFFIC BY DIRECTION OF THE C.O.

NAME (Last, first, middle)	SERVICE NO.	BRANCH AND CLASS
LARIONOFF, NICHOLAS JOHN JR	155-38-4441 B17 77 88	USN

DATE TRANSFERRED	NO. MOS. S/FSD THIS COMMAND	ACTIVITY TO WHICH TRANSFERRED

RATE	PURPOSE OF TRANSFER (Duty, Instruction, etc.)

AUTH:

SIGNATURE AND RANK*

FOR USE OF INTERMEDIATE REPORTING STATIONS (If necessary)

REPORTED AT (Ultimate destination)	DATE REPORTED	SIGNATURE AND RANK*

NAME (Last, first, middle)	SERVICE NO.	BRANCH AND CLASS

TRANSFERS AND RECEIPTS - NAVPERS 601-12 (New 12-61)
(Modified per Bureau approval 3-62)

12 2

ADMINISTRATIVE REMARKS — See Art. B-2305, BuPers Manual

SHIP OR STATION
NAVAL SECURITY STATION, 3801 NEBRASKA AVE. N.W., WASHINGTON, D.C. 20390

Cl. AUG 70: Assigned rating designator CT M for purposes of identifying LARIONOFF Jr. as being in the Communications Technician Maintenance Branch. Auth: BUPERSNOTE 1440 of 6 April 1970.

R. HECKHAUS, CWO2, USN
Assistant Personnel Officer
By direction of the C.O.

---

16 NOV 70: I hereby acknowledge receipt of the National Defense Service Medal. Auth: SECNAVINST 1650.1D.

NICHOLAS J. LARIONOFF
Nicholas J. Larionoff

WITNESSED:
R. Heckhaus, CWO2, USN
Assistant Personnel Officer

NAME (Last, First, Middle)	SERVICE NO.	BRANCH AND CLASS
LARIONOFF Jr., Nicholas John	B1? 77 88	USN

ADMINISTRATIVE REMARKS—NAVPERS 601-13 (Rev. 12-61) GPO 926-568 136

TRANSFERS AND RECEIPTS

*See Art. B-2305, BuPers Manual

SHIP OR STATION: NAVAL SECURITY STATION, WASHINGTON, D.C. 20390

DATE TRANSFERRED	NO. MOS. S/FSO THIS COMMAND	ACTIVITY TO WHICH TRANSFERRED

RATE	PURPOSE OF TRANSFER (Duty, Instruction, etc.)

AUTH.	SIGNATURE AND RANK*

FOR USE OF INTERMEDIATE REPORTING STATIONS (If necessary)

REPORTED AT (Ultimate destination)	DATE REPORTED	SIGNATURE AND RANK*

NAME (Last, first, middle)	SERVICE NO	BRANCH AND CLASS
LARIONOFF, NICHOLAS JOHN JR	B17 77 88	USN

DATE TRANSFERRED	NO. MOS. S/FSO THIS COMMAND	ACTIVITY TO WHICH TRANSFERRED
17 FEB 71	- - - - - - - - - - -	CO, NAVAL SCHOOLS COMMAND, NORVA. FOR TEMPORARY ADDITIONAL DUTY UNDER INSTRUCTION FOR COURSE

RATE	PURPOSE OF TRANSFER (Duty, Instruction, etc.)
CTM3	A-160-00-24, MOD ASR 28 TELETYPE MAINTENANCE CLASS CONVEN 8 FEB 71 FOR 9 WEEKS & COURSE A-160-00-53(LOW LEVEL TTY)CLASS CONVEN 12 APRIL 71 FOR 3 WEEKS

AUTH:	SIGNATURE AND RANK*
ENLISTED TRANSFER MANUAL, CHAPTER 23 BUPERS ltr Pers-B2166-tjc-14/40 of 5 NOV 70	R. HECKHAUS, CWO2, USN ASST PERS OFF BY DIR OF THE C.O.

FOR USE OF INTERMEDIATE REPORTING STATIONS (If necessary)

REPORTED AT (Ultimate destination)	DATE REPORTED	SIGNATURE AND RANK*

NAME (Last, first, middle)	SERVICE NO.	BRANCH AND CLASS
LARIONOFF, NICHOLAS JOHN JR	B17 77 88	USN

DATE TRANSFERRED	NO. MOS. S/FSO THIS COMMAND	ACTIVITY TO WHICH TRANSFERRED

RATE	PURPOSE OF TRANSFER (Duty, Instruction, etc.)

AUTH:	SIGNATURE AND RANK*

FOR USE OF INTERMEDIATE REPORTING STATIONS (If necessary)

REPORTED AT (Ultimate destination)	DATE REPORTED	SIGNATURE AND RANK*

NAME (Last, first, middle)	SERVICE NO.	BRANCH AND CLASS

RECORD OF EMERGENCY DATA

1. SHIP OR STATION

NAVAL SECURITY STATION, WASHINGTON, D.C. 20390

2. NAME OF SPOUSE | PLACE OF MARRIAGE | DATE OF MARRIAGE

NEVER MARRIED

ADDRESS | CITIZENSHIP

NA

3. NAMES OF CHILDREN	ADDRESS	SEX	DATE OF BIRTH	DEP
NONE				

4. FATHER | ADDRESS | DEP.

Nicholas John LARIONOFF Sr. | DECEASED

5. MOTHER | ADDRESS | DEP.

Marjory Joan (KRUSE) LARIONOFF | 6 Ridge Court, E. Brunswick, New Jersey | NO

6. OTHER

Name:	Address:	Relationship:	Dep.
NONE			

7. NEXT OF KIN OF SPOUSE | ADDRESS | RELATIONSHIP | DEP.

NA

8. DESIGNATIONS

a. I designate the following beneficiary or beneficiaries for unpaid pay and allowances which includes enlisted members savings deposits.

NAME	ADDRESS	RELATIONSHIP	%
Marjory Joan (KRUSE) LARIONOFF	6 Ridge Court, E. Brunswick, New Jersey	Mother	100%

b. I designate the following person to receive an allotment of my pay if I become missing or unable to transmit funds.

NAME	ADDRESS	% OF PAY EACH MO.
Marjory Joan (KRUSE) LARIONOFF	6 Ridge Court, E. Brunswick, N.J.	80%

c. In the event of my death I understand that a six months death gratuity will be paid to my surviving spouse and if no surviving spouse to my legal child or children. However, in the event I am not survived by a legal spouse or eligible children, I designate the following to receive the death gratuity (NOTE: Name parents, brothers or sisters only).

NAME	ADDRESS	RELATIONSHIP	%
Marjory J.(KRUSE) LARIONOFF	6 Ridge Court, E. Brunswick, N.J.	Mother	100%

9. INSURANCE POLICIES IN FORCE INCLUDING USGLI, NSLI AND SGLI:

NAME OF COMPANY	ADDRESS	POLICY NUMBER
Prudential Life Ins. Co.	New Brunswick, New Jersey	UNKNOWN
Servicemen's Group Life Ins.	Office of Servicemen's Group Life Ins. 212 Washington St., Newark, N.J.	UNKNOWN

10. LOCATION OF WILL OR OTHER VALUABLE DOCUMENTS | 11. RELIGION | 12. SOCIAL SECURITY NO.

NONE | Catholic | 155 38 4441

SIGNATURE OF DESIGNATOR | SIGNATURE AND TITLE OF WITNESS | DATE SIGNED

Nicholas J. Larionoff Jr | PNC James Leonard PETERSON, USN 914 66 21 | 05 AUG 70

NAME OF DESIGNATOR | FILE/SERV. NO. | GRADE/RATE | BRANCH OF SERVICE

LARIONOFF Jr., Nicholas John | B17 77 88 | CTM3 | USN

RECORD OF EMERGENCY DATA - NAVPERS 601-2 (REV 11-66) S/N-0106-006-1200

2 1

BEST COPY AVAILABLE

TRANSFERS AND RECEIPTS

9ND NTC 1306/66 (12-67)

*See Art. B-2305, BuPers Manual

SHIP OR STATION: NTC GREAT LAKES, ILL

NO. MOS. $/FSD THIS COMMAND: NONE

AUTH: BUPERS TC 173

NAME (Last, first, middle)	SERVICE NO.	RATE	BRANCH AND CLASS
LARIONOFF NICHOL	B177788	CTM3	USN

ACTIVITY TO WHICH TRANSFERRED: CO, XXXX NSGA SKAGGS IS

PURPOSE OF TRANSFER (Duty, Instruction, etc.): FOR DUTY SHORE

DATE TRANSFERRED	SIGNATURE AND RANK*
17 JUL 70	[illegible] CWO2 USN ASST PERS OFF BY DIR OF CNTC

FOR USE OF INTERMEDIATE REPORTING STATIONS (If necessary)

ORDERS MODIFIED TO SVC MBR WHILE IN LEAVE STATUS TO RPT NAVSECSTAWASHDC VICE CO NSGA, SKAGGS ISL CALIF.

REPORTED AT (Ultimate destination)	DATE REPORTED	SIGNATURE AND RANK*
NAVAL SECURITY STATION WASHINGTON, D.C. 20390	1746 04 AUG 70	R. HECKHAUS, CWO2, USN Assistant Personnel Officer By direction of the C.O.

DATE TRANSFERRED	NO. MOS. $/FSD THIS COMMAND	ACTIVITY TO WHICH TRANSFERRED
RATE	PURPOSE OF TRANSFER (Duty, Instruction, etc.)	

AUTH:

SIGNATURE AND RANK*

FOR USE OF INTERMEDIATE REPORTING STATIONS (If necessary)

REPORTED AT (Ultimate destination)	DATE REPORTED	SIGNATURE AND RANK*

NAME (Last, first, middle)	SERVICE NO.	BRANCH AND CLASS
LARIONOFF, NICHOLAS JOHN JR	B17 77 88	USN

DATE TRANSFERRED	NO. MOS. $/FSD THIS COMMAND	ACTIVITY TO WHICH TRANSFERRED
RATE	PURPOSE OF TRANSFER (Duty, Instruction, etc.)	

AUTH:

SIGNATURE AND RANK*

FOR USE OF INTERMEDIATE REPORTING STATIONS (If necessary)

REPORTED AT (Ultimate destination)	DATE REPORTED	SIGNATURE AND RANK*

NAME (Last, first, middle)	SERVICE NO.	BRANCH AND CLASS

TRANSFERS AND RECEIPTS - NAVPERS 601-12 (Rev 12-61)
(Modified per Bureau approval 5-62)

12

ADMINISTRATIVE REMARKS *See Art. B-2305, BuPers Manual*

SHIP OR STATION [illegible]

13-FEB-70 When eligible in all respects, [illegible] may be advanced to GT3 [illegible] ASTM: [illegible] LARIONOFF. This authorization [illegible] 12-FEB-71

E. H. Hamming

E. H. [illegible], [illegible], USN
ASST. [illegible], BY DIR [illegible]

CT3

Ø21271

PERS N3124
"FINISHED FILE"

NAME (Last, First, Middle)	SERVICE NO.	BRANCH AND CLASS
LARIONOFF, NICHOLAS HOHN JR.	[illegible] 77 88	USN

ADMINISTRATIVE REMARKS—NAVPERS 601-13 (Rev. 12-51) 0105-900-9010 13 5

ADMINISTRATIVE REMARKS *See Art. B-2305, BuPers Manual*

SHIP OR STATION SERVICE SCHOOL COMMAND, NTC, GREAT LAKES, ILLINOIS 60088

09 MAR 70 : I understand and agree that upon my being advanced to pay grade E 4 in accordance with BUPERSINST 1430.14 series, that page 1A dated **09 JUL 69**, which was executed for the purpose of **AEF Program**, will become binding and will serve to fulfill the obligated service requirements for automatic advancemen I understand that any future cancellation of obligated service requirements for the purpose of **AEF Program** will not serve as reason for cancellation of page 1A dated **09 JUL 69** except as set forth in BUPERSMAN 1050[illegible].

Nicholas John Larionoff Jr.
NICHOLAS JOHN LARIONOFF, JR.

WITNESSED: E. H. Hornung
E. H. HORNUNG, CWO2, USN
ASS'T PERS OFF BY DIR OF CNTC

---

09 MAR 70 : Advanced to **CTM3** effective this date. AUTH: BUPERSINST 1430.14 series.

E. H. Hornung
E. H. HORNUNG, CWO2, USN
ASS'T PERS OFF BY DIR OF CNTC

NAME (Last, First, Middle)	SERVICE NO.	BRANCH AND CLASS
LARIONOFF, NICHOLAS JOHN, JR.	B17 77 88	USN

ADMINISTRATIVE REMARKS—NAVPERS 601-13 (Rev. 12-61) 0108-900-8010 13 [6]

TRANSFERS AND RECEIPTS

9ND NTC 1306/66 (12-67)

*See Art. B-2305, BuPers Manual

SHIP OR STATION: NTC GREAT LAKES, ILL

NO. MOS. $/FSD THIS COMMAND: NONE

AUTH: BUPERS TC R 2099

NAME (Last, first, middle)	SERVICE NO.	RATE	BRANCH AND CLASS
LARIONOFF NICHOLAS JOHN JR	8177788	SN	USN

ACTIVITY TO WHICH TRANSFERRED: CO, USS ~~XXXX~~ SSC NTC GLAKES ILL

PURPOSE OF TRANSFER (Duty, Instruction, etc.): FOR DUTY ~~XXXXXXXXX~~ TEMINS BE & E SCOL CLCVN 228EP69 PET DUINS CTM A 8001

DATE TRANSFERRED	SIGNATURE AND RANK	
29AUG69	E A MEDELBERG E.A. Medelberg	ASST PERS OFF BY DIR OF CNTC

FOR USE OF INTERMEDIATE REPORTING STATIONS (If necessary)

REPORTED AT (Ultimate destination)	DATE REPORTED	SIGNATURE AND RANK*
SSC NTC GLAKES ILL	12 SEP 1969	S.D. BUSSELL, CWO2, USN ASS'T PERS OFF BY DIR CNTC

DATE TRANSFERRED	NO. MOS. $/FSD THIS COMMAND	ACTIVITY TO WHICH TRANSFERRED

RATE	PURPOSE OF TRANSFER (Duty, Instruction, etc.)

AUTH:	SIGNATURE AND RANK*

FOR USE OF INTERMEDIATE REPORTING STATIONS (If necessary)

REPORTED AT (Ultimate destination)	DATE REPORTED	SIGNATURE AND RANK*

NAME (Last, first, middle)	SERVICE NO.	BRANCH AND CLASS

DATE TRANSFERRED	NO. MOS. $/FSD THIS COMMAND	ACTIVITY TO WHICH TRANSFERRED

RATE	PURPOSE OF TRANSFER (Duty, Instruction, etc.)

AUTH:	SIGNATURE AND RANK*

FOR USE OF INTERMEDIATE REPORTING STATIONS (If necessary)

REPORTED AT (Ultimate destination)	DATE REPORTED	SIGNATURE AND RANK*

NAME (Last, first, middle)	SERVICE NO.	BRANCH AND CLASS

TRANSFERS AND RECEIPTS – NAVPERS 601-12 (Rev 12-61)
(Modified per Bureau approval 5-62)

12

BND NTC 1070/5

ADMINISTRATIVE REMARKS See Art. B-3303, BuPers Manual

SHIP OR STATION

NTC GREAT LAKES, ILL.

24 JUN 1969 : RECEIVED FOR RECRUIT TRAINING.

29AUG69 : SATISFACTORILY COMPLETED CURRICULUM FOR RECRUIT TRAINING. (NAVPERS 92353A).

ADVANCED OR CHANGED IN RATE TO _____ EFFECTIVE THIS DATE.
AUTH: BUPERS LTR PERS-B21 ltr of 29 MAY 68.

AUTHORIZED TO WEAR THE NATIONAL DEFENSE SERVICE MEDAL IN ACCORDANCE WITH SECNAV INST 1650.1 SERIES.

COMPLETED COURSE OF INSTRUCTION IN THE CODE OF CONDUCT FOR MEMBERS OF THE ARMED FORCES OF THE U.S. IN ACCORD U. S. NAVY REGULATIONS, ART. 0740.1 AND BPM, ART. 5101.

E.A. MEDELLROG
ASS'T PERS OFF BY DIR CNTC

NAME (LAST, FIRST, MIDDLE)	SERVICE NO.
LARIONOFF NICHOLAS JOHN JR.	177788

ADMINISTRATIVE REMARKS - NAVPERS 601 - 13 (REV. 12-61)

13

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ENLISTED CLASSIFICATION RECORD

LAST NAME	(First)	(Middle)	SERVICE NO.	RATE	CLASS	CO. NO.	D. O. T. OCCUP. CODE
LARIONOFF	NICHOLAS	JOHN JR	B17 77 88	SNJEF	11	411	000.000

YR. BIRTH	GCT	ARI	MECH	CLER	BTB FORM	SONAR	RADIO	ETST
47	62	62	49	70	7	48	74	69

TEST SCORE PROFILE

	GCT	ARI	MECH	CLER
HIGH 1				X
2	X	X		
AVER 3			X	
4				
LOW 5				

SPECIAL TEST SCORES

NAME	FORM	DATE	SCORE
SHOP PRACTICE	7	7/2/69	53
FLAT	1	7/2/69	18

MOST SIGNIFICANT EDUCATION: College — DATES: 9/65-6/69 — YEARS EDUCATION: 16 — DEGREE: BS

NAME OF COLLEGE OR UNIVERSITY: Fairleigh Dickinson University, Teaneck, New Jersey

MAJOR COURSES: Mathematics (70SH)

SPECIALIZED TRAINING (Vocational, trade technical, business)

SPECIAL STUDIES	ALG.-GEOM.	TRIG.	PHYS.	TYPING	SHORTHAND
HIGH SCH.	3½	½	1	35 WPM	- WPM
COLLEGE	-	-	2½	- WPM	- WPM

LEISURE TIME ACTIVITIES: -

SPORTS IN WHICH QUALIFIED: -

TALENT FOR PUBLIC ENTERTAINMENT: -

HIGHEST POSITION OF LEADERSHIP: -

MAIN CIVILIAN OCCUPATION (D. O. T. TITLE): STUDENT

EMPLOYER'S NAME:

LOCATION	YRS. SERVICE	WKLY. WAGE	TRADE TEST NAME	SCORE
		$		

DUTIES, SKILLS, MACHINES

SECOND BEST OCCUPATION (D. O. T. TITLE):

EMPLOYER'S NAME:

LOCATION	YRS. SERVICE	WKLY. WAGE	TRADE TEST NAME	SCORE
		$		

DUTIES, SKILLS, MACHINES

OTHER WORK EXPERIENCE

RIGHT EYE		LEFT EYE		RIGHT HANDED	LEFT HANDED	QUALIFIED SWIMMER	QUALIFIED FOR	NOT QUALIFIED FOR
20/400	20/20	20/400	20/20	X	X	CLASS III		

CODED RECOMMENDATIONS: 801-891-232-B33

RECOMMENDED TO STRIKE FOR: Technician Rating

REMARKS: (F/16/43/JH) Calculus 2ISH, Computer Science 9SH, English 6SH, Col.

PREPARING ACTIVITY: NTC GREAT LAKES, ILL.

I VOLUNTEER FOR: Communications Technician Duty — INITIALS: NDL

INTERVIEWEE'S SIGNATURE: Nicholas John Larionoff Jr.

NICHOLAS JOHN LARIONOFF, JR.

VERIFIED: G W Buck

R. W. BUCK, PN1, USN/rb

DATE: 7/9/69

ENLISTED CLASSIFICATION RECORD NAVPERS-601-3 (REV. 4-59) S/N 0105-401-0902

FORM APPROVED BY COMPTROLLER GENERAL U.S. 811
25 MARCH 1958

SHIP OR STATION: NAVAL TRAINING CENTER, GREAT LAKES, ILLINOIS (Name) (Service Number) (Rate)

LOCATION: GREAT LAKES, ILLINOIS

I NICHOLAS JOHN LARIONOFF JR., B17 77 88, SNJEF, USN having enlisted in the Navy of the United States on 23 JUN 69 for FOUR years, in consideration of the pay, allowances, and benefits which will accrue to me during the continuances of my service, voluntarily agree to extend my enlistment as authorized by Section 5509, of Title 10, United States Code, and the regulations issued pursuant thereto. I voluntarily agree to extend my enlistment for a period of TWO years from the date of expiration thereof, subject to the provisions and obligations of my said contract of enlistment of which this, my voluntary agreement, shall form a part.

REASON FOR EXTENSION: "Training (Advanced Electronics Field (AEF) Program—BuPers ltr Pers-B2131-gn-56 of 21 August 1966). I understand this extension or current [illegible] binding upon execution and thereafter may not be cancelled except as set forth in BUPERS Manual, Article C-1407."

I understand that when a war or national emergency is declared by Congress, or a national emergency is declared by the President, my enlistment, as extended by this agreement, may be further extended until 6 months after the end of such war or national emergency, unless I voluntarily re-enlist or re-extend my enlistment, and that when my enlistment is so extended that provisions of Section 5540, Title 10, United States Code, which authorized an increase of basic pay of 25 percent is inapplicable, and further I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic, that I will bear true faith and allegiance to the same, and I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God.

SIGNATURE: Nicholas John Larionoff Jr

SUBSCRIBED and sworn to before me this 9th day of JULY 1969 and this contract is hereby perfected and accepted for and on behalf of the United States. Service thereunder to begin from the date following the date the original contract of enlistment would have expired had it not been extended. This is the FIRST extension of current enlistment.

SIGNATURE (See Art. 1268, U.S. Navy Regulations): J. E. BAIER, LT, USN

RANK AND TITLE: ASST TO PERSONNEL OFFICER

EXAMINED AND FOUND PHYSICALLY QUALIFIED FOR EXTENSION OF ENLISTMENT: (Examination to be held just prior to expiration of enlistment)

DATE _____ SHIP OR STATION _____

SIGNATURE OF MEDICAL OFFICER

RANK AND TITLE

ORDER TO CREDIT MILEAGE ALLOWANCE, REENLISTMENT BONUS, LUMP SUM LEAVE PAYMENT AND OTHER ALLOWANCES AS PROVIDED BY LAW AND REGULATIONS

THE ENLISTMENT DESCRIBED ABOVE, HAS BEEN COMPLETED THIS DATE, _____ AND TOMORROW THE EXTENSION THEREOF FOR _____ YEARS WILL BECOME EFFECTIVE.

☐ ELECTED CASH SETTLEMENT _____ (Words) _____ (Figures) DAYS UNUSED LEAVE

☐ ENTER CHECKAGE FOR _____ DAYS EXCESS LEAVE FROM _____ TO _____

☐ ELECTED TO CARRY OVER UNUSED LEAVE

NET TIME SERVED IN THIS ENLISTMENT (Yrs.) (Mos.) (Days)

AT MIDNIGHT THIS DATE, ON DUTY AT (Place)

OTHERWISE ENTITLED TO (Type of Discharge)

IF AT SEA, NEXT PORT REACHED

☐ I HEREBY ELECT TO RECEIVE REENLISTMENT BONUS UNDER PROVISIONS OF SEC. 208, CAREER COMPENSATION ACT OF 1949

☐ I HEREBY ELECT MILEAGE ALLOWANCE TO (LOCATION) _____

PLACE OF (SEE TRAVEL INSTRUCTIONS) _____

SIGNATURE

TOTAL ACTIVE FEDERAL SERVICE (At Midnight this date) (Yrs.) (Mos.) (Days)

REENLISTMENT OR EXTENSIONS ENTERED INTO ON OR AFTER 1 OCTOBER 1949, FOR WHICH A BONUS/ALLOWANCE WAS PAYABLE.

(Number)

TOTAL OF PREVIOUS RE-ENLISTMENT BONUSES LESS TOTAL BONUS RECOUPMENTS

AMOUNT $

☐ HOME ADDRESS AT TIME OF ENLISTMENT, VERIFIED

THE DISBURSING OFFICER IS AUTHORIZED AND DIRECTED TO CREDIT, AS PROVIDED BY LAW AND REGULATIONS, MILEAGE AND RE-ENLISTMENT BONUS AS SHOWN.

MILEAGE ALLOWANCE $

REENLISTMENT BONUS $

MISCELLANEOUS

C. O. ORDER NO.

D. O. SYMBOL NO.

SIGNATURE (See Art. B-2305, BuPers Manual)

RANK AND TITLE

NAME (Last, First, Middle): LARIONOFF NICHOLAS JOHN JR

SERVICE NO.: B17 77 88

RATE: SNJEF

BRANCH AND CLASS: USN

AGREEMENT TO EXTEND ENLISTMENT NAVPERS 601-1A/NAVCOMPT 513 (Rev. 9-63)

S/N 0105-900-8690

PART 5 — FOR BUPERS UPON AGREEMENT

EXEMPT REPORT

ENLISTED CLASSIFICATION RECORD

LAST NAME (First) (Middle)	SERVICE NO.	RATE	CLASS	CO. NO.	D. O. T. OCCUP. CODE
LARIONOFF NICHOLAS JOHN JR	B17 77 88	SNJEF	11	411	000.000

YR. BIRTH	GCT	ARI	MECH	CLER	BTB FORM	SONAR	RADIO	ETST
47	62	62	49	70	7	48	74	69

TEST SCORE PROFILE

	GCT	ARI	MECH	CLER
HIGH 1				x
2	x	x		
AVER 3			x	
4				
LOW 5				

SPECIAL TEST SCORES

NAME	FORM	DATE	SCORE
SHOP PRACTICE	7	7/2/69	53
FLAT	1	7/2/69	18

MOST SIGNIFICANT EDUCATION	DATES	YEARS EDUCATION	DEGREE	NAME OF COLLEGE OR UNIVERSITY
College	9/65-6/69	16	BS	Fairleigh Dickinson University Teaneck, New Jersey

MAJOR COURSES: Mathematics (70SH)

SPECIAL STUDIES	ALG.-GEOM.	TRIG.	PHYS.	TYPING	SHORTHAND
HIGH SCH.	3½	½	1	35 WPM	- WPM
COLLEGE	-	-	2½	- WPM	- WPM

SPECIALIZED TRAINING (Vocational, trade technical, business)

-

LEISURE TIME ACTIVITIES: -

SPORTS IN WHICH QUALIFIED: -

TALENT FOR PUBLIC ENTERTAINMENT: -

HIGHEST POSITION OF LEADERSHIP: -

MAIN CIVILIAN OCCUPATION (D. O. T. TITLE): STUDENT

EMPLOYER'S NAME:

LOCATION	YRS. SERVICE	WKLY. WAGE	TRADE TEST NAME	SCORE
		$		

DUTIES, SKILLS, MACHINES

SECOND BEST OCCUPATION (D. O. T. TITLE):

EMPLOYER'S NAME:

LOCATION	YRS. SERVICE	WKLY. WAGE	TRADE TEST NAME	SCORE
		$		

DUTIES, SKILLS, MACHINES

CERTIFIED TO BE A TRUE COPY

[signature]

W. B. MAIER, LT

ASSIST PERS OFF BY DIR ONTS

OTHER WORK EXPERIENCE

RIGHT EYE		LEFT EYE		RIGHT HANDED	LEFT HANDED	QUALIFIED SWIMMER	QUALIFIED FOR	NOT QUALIFIED FOR
20/400	20/20	20/400	20/20	x	x	CLASS III		

CODED RECOMMENDATIONS: 801-891-232-B33

REMARKS: (F/16/43/JH) Calculus 21SH, Computer Science 9SH, English 6SH, Col.

RECOMMENDED TO STRIKE FOR: Technician Rating

PREPARING ACTIVITY: NTC GREAT LAKES, ILL.

I VOLUNTEER FOR: Communications Technician Duty

INITIALS: NJL

INTERVIEWEE'S SIGNATURE: [signature] NICHOLAS JOHN LARIONOFF, JR.

VERIFIED: [signature] R. W. BUCK, PN1, USN/rb

DATE: 7/9/69

ENLISTED CLASSIFICATION RECORD NAVPERS-601-3 (REV. 4-59) S/N 0105-401-0902

6/75

411 **ADMINISTRATIVE REMARKS** *See Art. B-2103, BuPers Manual*

SHIP OR STATION

NTC GREAT LAKES, ILLINOIS

9 JUL 69 I fully understand that, by virtue of having been enlisted in the U.S. Navy as a SNJC I am guaranteed assignment to either one of a group of service schools or to duty in a specific apprenticeship field upon successful completion of recruit training. I desire to waive my rights guaranteed by my enlistment contract, and I hereby request that my rate be changed in equal pay grade to SNJEF. This change of rate is requested for the purpose of:

[ ] Assignment to the nuclear field program. The provisions of this program, the category to which my rate will be changed, the six (06) year service obligation and the requirement to volunteer for submarine duty have been fully explained to me.

[ ] Assignment to machine accountant in-service training. I understand that, in the event I cannot be selected for such training, my rate will remain ——. ——— and my enlistment guarantee will remain in effect.

[ ] Assignment to the navy school of music. I understand that, in the event I cannot be selected for this school, my rate will remain ——————and my enlistment guarantee will remain in effect.

[ ] Assignment to a service school not included in the category in which I was enlisted. I understand that, in effecting this change, my guarantee of assignment to a service school will be maintained.

[ ] Consideration for assignment to duty in the ——————apprenticeship field. I understand that such assignment is dependent upon the current needs of the navy and that no guarantee of assignment to training in a specific navy rating or occupational field can be made. I further understand that this waiver cancels any guarantees concerning assignment to service schools or to duty which may be expressed or implied in my enlistment contract.

[X] Assignment to the advanced electronics field program. The provisions of this program, the category to which my rate will be changed and the six (06) years service obligation have been fully explained to me.

[ ] Having refused to volunteer for medical or dental service duty, I do hereby waive my school guarantee under the high school/junior college training program. I understand that I am no longer guaranteed a service school and that my rate will be changed to ———.

WITNESSED:

J. E. BAIER, LT, USN
ASS'T TO PERSONNEL OFFICER

M. Nicholas John Larioncff Jr.

CONSENT OF PARENT OR LEGAL GUARDIAN (for minority enlistees only)

I ——————————————————————do hereby certify that I am the

——————————————————————of ——————————————————————

and I do hereby consent to the above change in rate.

Signature: ——————————————————————

9 JUL 69 : Rate changed this date from SNJC to SNJEF in accordance with

J. E. BAIER, LT, USN
ASS'T TO PERSONNEL OFFICER

——————————: I fully understand the implications of serving on duty with my ——————————
but I have a profound desire to serve with him and do not anticipate submitting a request to be separated or transferred in the near future.

WITNESSED:

ASS'T TO PERSONNEL OFFICER

NAME (Last, First, Middle)	SERVICE NO.	BRANCH AND CLASS
LARIONOFF NICHOLAS JOHN JR	BI7 77 88	USN

ADMINISTRATIVE REMARKS

See Art. B-2305, BuPers Manual

SHIP OR STATION
AFEES, NEWARK, NJ

23 JUN 69 (Date) 11 Enlisted this date in the U.S. Navy under the provisions of the High School Graduate/Junior College Training Program for 4 years in the rate of SNJC. AUTH: Part B, Chapter 2, Section 6, CRUITMAN.

DD Form 53 submitted.

Meets required visual acuity and special physical standards for program in which enlisted. Administered the color perception test and was found to (have/not have) normal color perception. SBTD (WAS/WAS NOT) administered. SBTB: G_____ A_____ M_____.

C.E. ST. MARTIN MAJAGC
Signature of Enlisting Officer

23 JUN 69 I am enlisting in the High School Graduate/Junior College Training Program and have sighted a list of schools/courses available in this category. No promise as to specific school or course of training to which I will be assigned has been made to me. I further understand that final determination as to the school or course of training to which I am to be assigned will be made during recruit training/classification and outfitting. School selection depends upon scores I attain on Navy aptitude tests, my eligibility for security clearance, my physical qualifications and Navy Training requirements. I must remain qualified by my military and professional performance and satisfactorily complete recruit training if applicable. I understand the above statements.

Nicholas John Lawoff Jr.
Signature of Enlistee

C.E. ST. MARTIN MAJ AGC
Signature of Enlisting Officer

NAME (Last, First, Middle)
LAWOFF, NICHOLAS JOHN JR

SERVICE NO.
B17 77 68

BRANCH AND CLASS
USN

ADMINISTRATIVE REMARKS—NAVPERS 601-13 (Rev. 12-61)

S/N 0106-806-9010

13

RECORD OF EMERGENCY DATA

1. SHIP OR STATION
AFEES, NEWARK, NJ

2. NAME OF SPOUSE	PLACE OF MARRIAGE	DATE OF MARRIAGE
NEVER MAIRIED		
ADDRESS		CITIZENSHIP

3. NAMES OF CHILDREN	ADDRESS	SEX	DATE OF BIRTH	DEP.
NONE				
4. FATHER NICHOLAS J LARIONOFF SR	ADDRESS 6 RIDGE COURT, EAST BRUNSWICK, NJ			DEP. NO
5. MOTHER MARJORI (KRUSE) LARIONOFF	ADDRESS 6 RIDGE COURT, EAST BRUNSWICK, NJ			DEP. NO

6. OTHER Name:	Address:	Relationship:	Dep.
NONE			
7. NEXT OF KIN OF SPOUSE NONE	ADDRESS	RELATIONSHIP	DEP.

8. DESIGNATIONS

a. I designate the following beneficiary or beneficiaries for unpaid pay and allowances which includes enlisted members savings deposits.

NAME	ADDRESS	RELATIONSHIP	%
NICHOLAS J. LARIONOFF SR	SAME AS #4	FATHER	100

b. I designate the following person to receive an allotment of my pay if I become missing or unable to transmit funds.

NAME	ADDRESS	% OF PAY EACH MO.
MARJORY LARIONOFF	SAME AS #4	80

c. In the event of my death I understand that a six months death gratuity will be paid to my surviving spouse and if no surviving spouse to my legal child or children. However, in the event I am not survived by a legal spouse or eligible children, I designate the following to receive the death gratuity (NOTE: Name parents, brothers or sisters only).

NAME	ADDRESS	RELATIONSHIP	%
NICHOLAS J. LARIONOFF SR	SAME AS #4	FATHER	100

9. INSURANCE POLICIES IN FORCE INCLUDING USGLI, NSLI AND SGLI:

NAME OF COMPANY	ADDRESS	POLICY NUMBER
PRUDENTIAL LIFE INS. CO.	NEW BRUNSWICK, NJ	UNKNOWN

10. LOCATION OF WILL OR OTHER VALUABLE DOCUMENTS	11. RELIGION	12. SOCIAL SECURITY NO.
NONE	ROM CATH	155 38 4441

SIGNATURE OF DESIGNATOR	SIGNATURE AND TITLE OF WITNESS	DATE SIGNED
Nicholas John Larionoff Jr.	[illegible]	29 JUN 69

NAME OF DESIGNATOR	FILE/SERV. NO.	GRADE/RATE	BRANCH OF SERVICE
NICHOLAS JOHN LARIONOFF JR	B17 77 88	SNJC	USN

ENLISTMENT CONTRACT - ARMED FORCES OF THE UNITED STATES

(Also to be used by AFEES in conjunction with induction processing as a means of providing data for manpower information reporting systems.)

Form Approved Budget Bureau No. 22-R016

1. SERVICE NO.	2. HIGHEST SCHOOL GRADE COMPLETED	3. RATE/GRADE	4. BRANCH/CLASS AND COMPONENT	5. LAST NAME - FIRST NAME - MIDDLE NAME
B17 77 88	15	SNJC	USN	LARIONOFF NICHOLAS JOHN JR

6. DATE OF ENL/INDUC	7. TERM OF ENLISTMENT/INDUC	8a. MARITAL STATUS	8b. NO. DEPEND	9. NAME & LOCATION OF ACTIVITY EFFECTING ENLISTMENT/REENLISTMENT/INDUCTION
Ø6 23 69	4 YEARS ☐ MINORITY	Ø-Ø		AFEES, NEWARK NJ

10. AFQT SCORE	11. ENLISTED/REENLISTED/INDUCTED	12. AUTHORITY FOR ENLISTMENT/REENLISTMENT/INDUC
Ø87	☒ 1ST ENLIST ☐ REENL ☐ INDUCTION	CRUITMAN, ART B-26Ø2

13. TERM OF ACDU (Reserve only)	14. ACTIVE/INACTIVE STATUS (Reserve only)	15. ACCEPTED AT
ØØ MONTHS	☐ RETAINED ON AD ☐ IMMED AD (within 24 hrs) ☐ INACTIVE DUTY	NEW BRUNSWICK, NEW JERSEY

16. DATE MIL OBLI INC	17. PMOS/AFS CODE/MOD	18. RELIGION	19. SSAN	20. CONTRACT DUTY LIMITATIONS
Ø5 Ø8 69		ROM CATH	155384441	NA

21. DATE OF BIRTH	22. CITIZENSHIP	23. PLACE OF BIRTH (City, state or country)
Ø9 Ø1 47	☒ US ☐ NAT US ☐ COUNTRY (Specify)	NEWARK, NEW JERSEY

24. DATE OF TRANSFER	25. PHYSICAL PROFILE	26.	27. TRANSFER TO (Activity and location)	28.
Ø6 23 69	B	11Ø4Ø7	NTC, GLAKES, ILL	81

29. DATE LAST DC/RAD	30. SVC FROM WHICH LAST DISCHARGED	31.	32.	33. TYPE OF LAST DISCHARGE	34.
Ø6 22 69	USNR-R	32		HONORABLE	1

35. DATE OF RATE/GR	36. SELECTIVE SERVICE NO.	37. RATE/GR APT/RAPT	38. SELECTIVE SERVICE LOCAL BD (Bd No., city & state)
NA	28Ø32471495	NA	#32 PERTH AMBOY, MIDDLESEX, NJ

39. B ASD/ADBD	40. TOTAL ACTIVE FEDERAL SERVICE	41. HOME OF RECORD
Ø6 23 69	ØØ YEARS ØØ MONTHS ØØ DAYS	EAST BRUNSWICK, MIDDLESEX, NJ Ø8816

42. EP ED/PEDD	43. TOTAL INACTIVE FEDERAL SERVICE	44. MENTAL TEST SCORES
Ø5 Ø8 69	NA YEARS ____ MONTHS ____ DAYS	AQT-Ø66

45. SEX	46. RACE	47. DATA PROCESSING CODE
M	CAU	17 11 Ø ØØ 7 Ø S28 28 3 11 8 12 Ø ØØØØØØ

48.

174 3 ØØ A 1 111121

49. **PRIOR SERVICE**

BRANCH & CLASS/ ARMED FORCE & COMPONENT	SERVICE NUMBER	DATE ENL. IND. APT. AND/OR OAD	DATE OF DISCHARGE OR RELEASE	GRADE/ RATE OR RANK	TYPE OF DISCHARGE	REASON FOR DISCHARGE	TIME LOST (No. Days)
USNR-R	B17 77 88	5/8/69	6/22/69	SR	HON	ENL USN	NONE

50. I know that if I secure my enlistment by means of any false statement, willful misrepresentation or concealment as to my qualifications for enlistment, I am liable to trial by court martial or discharge for fraudulent enlistment and that, if rejected because of any disqualification known and concealed by me, I will not be furnished return transportation to place of acceptance.

I am of the legal age to enlist. I have never deserted from and I am not a member of the Armed Forces of the United States, the US Coast Guard or any Reserve component thereof; I have never been discharged from the Armed Forces or any type of civilian employment in the United States or any other country on account of disability or through sentence of either civilian or military court unless so indicated by me in Item 56, "Remarks" of this contract. I am not now drawing retired pay, a pension, disability allowance, or disability compensation from the government of the United States.

51. SECTION 3538 OF TITLE 10 OF THE UNITED STATES CODE is quoted: "(a) The Secretary of the Navy may extend enlistments in the Regular Navy and the Regular Marine Corps in time of war or in time of national emergency declared by the President for such period as he considers necessary in the public interest. Each member whose enlistment is extended under this section shall be discharged not later than six months after the end of the war or national emergency, unless he voluntarily extends his enlistment. (b) The substance of this section shall be included in the enlistment contract of each person enlisting in the Regular Navy or Regular Marine Corps."

52. SECTION 5540 OF TITLE 10 OF THE UNITED STATES CODE is quoted: "(a) The senior officer present afloat in foreign waters shall send to the United States by Government or other transportation as soon as possible each enlisted member of the naval service who is serving on a naval vessel, whose term of enlistment has expired, and who desires to return to the United States. However, when the senior officer present afloat considers it essential to the public interest, he may retain such a member on active duty until the vessel returns to the United States. (b) Each member retained under this section — (1) shall be discharged not later than 30 days after his arrival in the United States; and (2) except in time of war is entitled to an increase in basic pay of 25 percent. (c) The substance of this section shall be included in the enlistment contract of each person enlisting in the naval service."

53. I understand that, upon enlistment in a Reserve component of any of the Armed Forces of the United States, or upon transfer or assignment thereto, in time of war or National emergency declared by Congress, or when otherwise authorized by law, I may be ordered to active duty for the duration of the war or National emergency and for six months thereafter. OR SUCH OTHER PERIOD AUTHORIZED BY LAW

54. I have had this contract fully explained to me, I understand it, and certify that no promise of any kind has been made to me concerning assignment to duty, geographical area, schooling, special programs, assignment of government quarters, or transportation of dependents except as indicated NAV PERS 601-13(C)

* AUG 66 REPLACES DD FORM 4, 1 OCT 63, WHICH IS OBSOLETE

55. I swear *(or affirm)* that the foregoing statements have been read to me, that my statements have been correctly recorded and are true in all respects and that I fully understand the conditions under which I am enlisting.

SIGNATURE OF WITNESS	SIGNATURE OF APPLICANT *(First Name - Middle Name - Last Name)*
C.E. ST MARTIN MAJ AGC	Nicholas John Larionoff Jr.

56 REMARKS

57. OATH OF ENLISTMENT *(For service in Regular or Reserve Component of the Armed Forces except National Guard or Air National Guard)*

I, NICHOLAS JOHN LARIONOFF JR, do hereby acknowledge to have voluntarily enlisted under the conditions
(First Name - Middle Name - Last Name)
prescribed by law, this 23RD day of JUNE, 19 69, in the U.S. NAVY for a period of FOUR (4) years unless sooner discharged by proper authority; and I do solemnly swear *(or affirm)* that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations, and the Uniform Code of Military Justice. So help me God.

SIGNATURE Nicholas John Larionoff Jr.

58 OATH OF ENLISTMENT *(For service in National Guard or Air National Guard)*

I do hereby acknowledge to have voluntarily enlisted this _____ day of _____, 19_____, in the *(Army) (Air)* National Guard of the State of _____ and as a Reserve of the *(Army) (Air Force)* with membership in the *(Army National Guard of the United States) (Air National Guard of the United States)* for a period of _____ *(Years - Months - Days)* under the conditions prescribed by law, unless sooner discharged by proper authority.

I, _____, do solemnly swear *(or affirm)* that I will support and defend the Constitution of the United States and the State of _____ against all enemies, foreign and domestic; that I will bear true faith and allegiance to them; and that I will obey the orders of the President of the United States and the Governor of _____ and the orders of the officers appointed over me, according to law, regulations, and the Uniform Code of Military Justice. So help me God.
(First Name - Middle Name - Last Name)

SIGNATURE

59. CONFIRMATION OF ENLISTMENT

The above oath was subscribed and duly sworn to before me this 23RD day of JUNE, 19 69. To the best of my judgment and belief, enlistee fulfills all legal requirements, and in enlisting this applicant, I have strictly observed the regulations governing such enlistment. The above oath, as filled in, was read to the applicant prior to subscribing thereto.

TYPED NAME, GRADE/RANK, AND ORGANIZATION OF ENLISTING OFFICER	SIGNATURE OF ENLISTING OFFICER
C.E. ST MARTIN MAJ AGC AFEES NWK NJ	C E St Martin

SC

ENLISTMENT CONTRACT - ARMED FORCES OF THE UNITED STATES

(Also to be used by AFEES in conjunction with induction processing as a means of providing data for manpower information reporting systems.)

Form Approved
Budget Bureau No. 22-R016

1. SERVICE NO.	2. HIGHEST SCHOOL GRADE COMPLETED	3 RATE/GRADE	4 BRANCH/CLASS AND COMPONENT	5. LAST NAME - FIRST NAME - MIDDLE NAME
6177788	15	SR	USNR-R	LARIONOFF, NICHOLAS JOHN JR.

6. DATE OF ENL/INDUC	7. TERM OF ENLISTMENT/INDUC	8a. MARITAL STATUS	8b. NO. DEPEND	9. NAME & LOCATION OF ACTIVITY EFFECTING ENLISTMENT/ REENLISTMENT/INDUCTION
05 08 69	6 YEARS ☐ MINORITY	Ø-Ø		AFEES, NEWARK, NEW JERSEY

10. AFQT SCORE	11 ENLISTED/REENLISTED/INDUCTED	12. AUTHORITY FOR ENLISTMENT/REENLISTMENT/INDUC
Ø87	☒ 1ST ENLIST ☐ REENL ☐ INDUCTION	CRUITMAN, ART. B-211Ø2

13. TERM OF ACDU (Reserve only)	14. ACTIVE/INACTIVE STATUS (Reserve only)	15. ACCEPTED AT
ØØ MONTHS	☐ RETAINED ON AD ☐ IMMED AD (within 24 hrs) ☒ INACTIVE DUTY	NEW BRUNSWICK, NEW JERSEY

16. DATE OF OBLIG	17. PMOS/AFS CODE/MOD	18. RELIGION	19. SSAN	20. CONTRACT DUTY LIMITATIONS
05 08 69		ROM CATH	155384441	NA

21. DATE OF BIRTH	22. CITIZENSHIP	COUNTRY (Specify)	23. PLACE OF BIRTH (City, state or country)
Ø9 Ø1 47	☒ US ☐ NAT US	☐	NEWARK, NEW JERSEY

24. DATE OF TRANSFER	25. PHYSICAL PROFILE	26.	27. TRANSFER TO (Activity and location)	28.
ØØ ØØ ØØ	B		RET ONBD NAVCRUITSTA NYK	

29. DATE LAST DC/RAD	30. SVC FROM WHICH LAST DISCHARGED	31.	32.	33. TYPE OF LAST DISCHARGE	34.
ØØ ØØ ØØ	NA			NA	

35. DATE OF RATE/GR	36. SELECTIVE SERVICE NO.	37. RATE/GR APT/RAPT	38. SELECTIVE SERVICE LOCAL BD (Bd No., city & state)
NA	28 32 47 1495		#32 PERTH AMBOY MIDDLESEX NJ

39. B ASD/ADBD	40. TOTAL ACTIVE FEDERAL SERVICE	41. HOME OF RECORD
	ØØ YEARS ØØ MONTHS ØØ DAYS	Ø8816 EAST BRUNSWICK MIDDLESEX NJ

42. BP ED/PEBD	43. TOTAL INACTIVE FEDERAL SERVICE	44. MENTAL TEST SCORES
05 08 69	NA YEARS ____ MONTHS ____ DAYS	AQT-Ø66

45. SEX	46. RACE	47. DATA PROCESSING CODE
M	CAU	NA

48.

NA

PRIOR SERVICE

49.

BRANCH & CLASS/ ARMED FORCE & COMPONENT	SERVICE NUMBER	DATE ENL, IND, APT, AND/OR OAD	DATE OF DISCHARGE OR RELEASE	GRADE/ RATE OR RANK	TYPE OF DISCHARGE	REASON FOR DISCHARGE	TIME LOST (No. Days)
NA							

50. I know that if I secure my enlistment by means of any false statement, willful misrepresentation or concealment as to my qualifications for enlistment, I am liable to trial by court martial or discharge for fraudulent enlistment and that, if rejected because of any disqualification known and concealed by me, I will not be furnished return transportation to place of acceptance.

I am of the legal age to enlist. I have never deserted from and I am not a member of the Armed Forces of the United States, the US Coast Guard or any Reserve component thereof; I have never been discharged from the Armed Forces or any type of civilian employment in the United States or any other country on account of disability or through sentence of either civilian or military court unless so indicated by me in item 56, "Remarks" of this contract. I am not now drawing retired pay, a pension, disability allowance, or disability compensation from the government of the United States.

51. SECTION 5538 OF TITLE 10 OF THE UNITED STATES CODE is quoted: "*(a)* The Secretary of the Navy may extend enlistments in the Regular Navy and the Regular Marine Corps in time of war or in time of national emergency declared by the President for such period as he considers necessary in the public interest. Each member whose enlistment is extended under this section shall be discharged not later than six months after the end of the war or national emergency, unless he voluntarily extends his enlistment. *(b)* The substance of this section shall be included in the enlistment contract of each person enlisting in the Regular Navy or Regular Marine Corps."

52. SECTION 5540 OF TITLE 10 OF THE UNITED STATES CODE is quoted: "*(a)* The senior officer present afloat in foreign waters shall send to the United States by Government or other transportation as soon as possible each enlisted member of the naval service who is serving on a naval vessel, whose term of enlistment has expired, and who desires to return to the United States. However, when the senior officer present afloat considers it essential to the public interest, he may retain such a member on active duty until the vessel returns to the United States. *(b)* Each member retained under this section — (1) shall be discharged not later than 30 days after his arrival in the United States; and (2) except in time of war is entitled to an increase in basic pay of 25 percent. *(c)* The substance of this section shall be included in the enlistment contract of each person enlisting in the naval service."

53. I understand that, upon enlistment in a Reserve component of any of the Armed Forces of the United States, or upon transfer or assignment thereto, in time of war or National emergency declared by Congress, or when otherwise authorized by law, I may be ordered to active duty for the duration of the war or National emergency and for six months thereafter. OR SUCH OTHER PERIOD AUTHORIZED BY LAW

54. I have had this contract fully explained to me, I understand it, and certify that no promise of any kind has been made to me concerning assignment to duty, geographical area, schooling, special programs, assignment of government quarters, or transportation of dependents except as indicated _____

DD FORM 4, 1 AUG 66 REPLACES DD FORM 4, 1 OCT 63, WHICH IS OBSOLETE

19

55. I swear (or affirm) that the foregoing statements have been read to me, that my statements have been correctly recorded and are true in all respects and that I fully understand the conditions under which I am enlisting.

SIGNATURE OF WITNESS	SIGNATURE OF APPLICANT (First Name - Middle Name - Last Name)
Fred Howe [illegible]	Nicholas John Larionoff Jr.

56 REMARKS

57. OATH OF ENLISTMENT (For service in Regular or Reserve Component of the Armed Forces except National Guard or Air National Guard)

I, NICHOLAS JOHN LARIONOFF JR., do hereby acknowledge to have voluntarily enlisted under the conditions
(First Name - Middle Name - Last Name)

prescribed by law, this 8TH day of MAY, 1969, in the U.S. NAVY RESERVE for a period of SIX (6) years unless sooner discharged by proper authority; and I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegience to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations, and the Uniform Code of Military Justice. So help me God.

SIGNATURE Nicholas John Larionoff Jr.

58 OATH OF ENLISTMENT (For service in National Guard or Air National Guard)

I do hereby acknowledge to have voluntarily enlisted this _____ day of _____, 19____, in the (Army) (Air) National Guard of the State of _____ and as a Reserve of the (Army) (Air Force) with membership in the (Army National Guard of the United States) (Air National Guard of the United States) for a period of _____ (Years - Months - Days) under the conditions prescribed by law, unless sooner discharged by proper authority.

I, _____ (First Name - Middle Name - Last Name), do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the State of _____ against all enemies, foreign and domestic; that I will bear true faith and allegience to them; and that I will obey the orders of the President of the United States and the Governor of _____ and the orders of the officers appointed over me, according to law, regulations, and the Uniform Code of Military Justice. So help me God.

SIGNATURE

59. CONFIRMATION OF ENLISTMENT

The above oath was subscribed and duly sworn to before me this 8TH day of MAY, 1969. To the best of my judgment and belief, enlistee fulfills all legal requirements, and in enlisting this applicant, I have strictly observed the regulations governing such enlistment. The above oath, as filled in, was read to the applicant prior to subscribing thereto.

TYPED NAME, GRADE/RANK, AND ORGANIZATION OF ENLISTING OFFICER	SIGNATURE OF ENLISTING OFFICER
O.U. KOLIHA CPT USMC AFEES NEWARK NEW JERSEY	[illegible]

ADMINISTRATIVE REMARKS

SHIP OR STATION

NEWARK, NEW JERSEY

8 MAY 69 — Enlisted this date in the U.S. Naval Reserve for six years in the rate of SR, assigned to the CHE pool, Has agreed to enlist USN for four years. AUTH: Para3, 21102, CNAVPERS.

OD FORM 44 SUBMITTED

SBTB WAS NOT ADMINISTERED.

J. J. KOLIHA CAPT USMC

Signature of Enlisting Officer

NAME (LAST, FIRST, MIDDLE)	SERVICE NO USNR-R	BRANCH AND CLASS
LARIONOFF, NICHOLAS JOHN JR	B177788	USNR-R

FINISHED FILE B2166

NSG/G41/ac
1070
Ser 25564
153-38-4441
17 MAR 1973

From: Commander, Naval Security Group Command

To: CTM3 Nicholas J. LARIONOFF, USN, 153-38-4441

Via: Commanding Officer, Naval Security Station

Subj: Letter of Commendation

1. It gives me a great deal of pleasure to commend you for the outstanding performance displayed while assisting engineers at the Naval Weapon Laboratory, Dahlgren, Virginia in preparing OICS Vans for delivery to the fleet.

2. Your assistance to that facility is greatly appreciated. You demonstrated a degree of professional skill far above that normally expected of a third class petty officer. The equipment check out was accomplished expeditiously as a result of your thorough knowledge of the equipment. Your pleasant personality and willing cooperation impressed the NWL civilian personnel responsible for the equipment installation.

3. Your exceptionally qualified professional ability, initiative and dedication to duty reflect great credit upon yourself, the Naval Security Group and the United States Navy.

C. G. PHILLIPS
Rear Admiral
U.S. Navy

Copy to:

CHNAVPERS

Pers-B2213:MAS:jdt
16 January 1973

From: Chief of Naval Personnel

To: CTM3 Nicholas John LARIONOFF Jr., USN, 155 38 4441

Via: Commanding Officer
Naval Security Station
3801 Nebraska Ave. N.W.
Washington, D.C. 20390

Subj: Reenlistment

Ref: (a) Your request of 27 DEC 72
(5) BUPERSINST 1133.25

1. Reference (a), your request to reenlist in accordance with the provisions of reference (b) is approved. Authority is hereby granted to reenlist in the CTM rating.

M. A. SAPPINGTON
By direction

Copy to:
B2166

S70:VM:edc
1133
Ser: 71030
27 DEC 1972

FIRST ENDORSEMENT on CTM3 Nicholas John LARIONOFF Jr., USN, 155-38-4441 ltr req of 22 December 1972

From: Commanding Officer, Naval Security Station

To: Chief of Naval Personnel (Pers B2211)

Subj: Reenlistment; request for

Encl: (1) Certified copy NAVPERS 601-9

1. Forwarded, strongly recommending approval.

2. Petty Officer LARIONOFF is a competent and thorough technician who displays a high degree of initiative and readily accepts additional responsibility. His skill, training and abilities are a definite and continuing asset to the Navy. In view of his very high level of performance, it is strongly recommended he be permitted to reenlist in the Communications Maintenance Branch rate.

/s/ G. B. Wilson
G. B. WILSON
Acting
3801 Nebraska Ave. N.W.
Washington, D.C. 20390

170

22 December 1972

From: CTM3 Nicholas John LARIONOFF Jr., USN, 155-38-4441

To: Chief of Naval Personnel (Pers B2211)

Via: Commanding Officer, Naval Security Station

Subj: Reenlistment; request for

Ref: (a) BUPERSINST 1133.25

1. In accordance with reference (a), authority to reenlist is hereby requested.

a. I do desire to reenlist in the CTM rating.

b. My choices of ratings to which I desire conversion are:

(1) DP
(2) PT
(3) JO

/s/ Nicholas John Larionoff Jr.
NICHOLAS JOHN LARIONOFF JR.

ENLISTED PERFORMANCE RECORD

* SEE ART. 8-2305, BUPERS MANUAL

1. DATE	2. REASON	3. RATE	4. TRAITS: PROFESSIONAL PERFORMANCE	MILITARY BEHAVIOR	LEADERSHIP AND SUPERVISORY ABILITY	MILITARY APPEARANCE	ADAPT-ABILITY	5. SHIP OR ACTIVITY	6. INITIALS *
23 JUN 1969	M		DATE OF ENLISTMENT					NTC GLAKES, ILL.	
29AUG69	T	ENJCEF	RECRUIT TRAINING					NTC GLAKES, ILL.	
9MAR70	M/AR	SA	ADVANCED TO CTM3 (Pg. 13-6)					SSC NTC GLAKES ILL	
17JUL70	T	CTM3	N.O.	3.4	N.O.	3.4	3.4	SSC NTC GLAKES, ILL	
16OCT70	P	CTM3	LESS THAN NINETY DAYS					NAVSECSTA, WASHDC	
1APR71	P	CTM3	3.8	3.6	N.O.	3.6	3.8	NAVSECSTA, WASHDC	
2 JUL 71	M	CTM3	RECOMMENDED FOR CTM2					NAVSECSTA, WASHDC	
10CT71	P	CTM3	3.8	3.6	N.O.	3.4	3.8	NAVSECSTA, WASHDC	
1APR72	P	CTM3	3.6	3.6	N.O.	3.6	3.8	NAVSECSTA WASHDC	
10CT72	P	CTM3	3.8	3.8	3.6	3.6	3.8	NAVSECSTA WASHDC	

Pers-B2h2-ajkt-1a
155-38-4441

JUL 18 1972

Dear Senator Case:

Thank you for your recent inquiry concerning the Variable Reenlistment Bonus (VRB) of Petty Officer John Larinoff Junior, Communications Technician (Maintenance) third class, United States Navy.

In addition to the regular reenlistment bonus, the Navy pays the VRB as a reenlistment incentive to qualified personnel having critical skills in those areas where shortages of career petty officers exist. The Navy in conjunction with the Department of Defense constantly reviews the critical job skills which are VRB eligible to determine if the current or projected manning levels are sufficiently low to justify their continuation in this program. Although the communications technician (maintenance) rating was formerly VRB eligible, the most recent review of the manning levels dictated that it be removed from the eligibility list. This was announced on 24 March 1972.

The six-year obligation incurred by Petty Officer Larinoff was for the purpose of receiving training in the Navy's Advanced Electronics Field Program. Entrance into this program did not guarantee Petty Officer Larinoff anything more than this training, and as such, did not require payment of a VRB. Entry into an agreement which prohibits changing eligibility rules for payment of the VRB would unduly restrict the Navy's exercise of sound fiscal management.

It is hoped that the foregoing information will be of assistance to you in this matter.

By direction of the Chief of Naval Personnel:

Jacket ←
B2h2
Prep: 11 Jul 72
Prep for Sig by R. K. SCHULZ, LCDR, USN, Pers, Bh2, X42888, rm 1825

Sincerely yours.

A. L. KIVLEN
Captain, U.S. Navy
Assistant Director Enlisted Personnel

Honorable Clifford P. Case
United States Senate
Washington, D. C.

FINISHED FILE PERS B2

June 20, 1972

United States Senate

Re: Nicholas John Larionoff, Jr., USN
155-38-4441

Respectfully referred to
Commander, Navy Recruiting Command
Ballston Center Tower #3
4015 Wilson Boulevard
Arlington, Va. 22203

for such consideration as the communication herewith submitted may warrant, and <u>for a report thereon, in duplicate</u> to accompany <u>return of inclosure.</u> Serviceman states he believes he should receive bonus promised for extension or out of Navy as originally scheduled.

By direction of

Clifford P. Case

U. S. S.

CPC:d enc

28 10558

Code 33/hs

5 JUL 1972

Dear Senator Case:

This is in reference to your inquiry of 20 June 1972 concerning Petty Officer Nicholas John Larinoff, Jr., Communications Technician (M) third class, United States Navy.

The matter regarding Navy variable reenlistment bonuses falls under the cognizance of the Chief of Naval Personnel. Therefore, your inquiry has been forwarded to the appropriate authorities within the Bureau of Naval Personnel for response. You may expect a further reply from them in the near future.

Thank you for your interest in this matter.

By direction of the Commander, Navy Recruiting Command:

Sincerely yours,

Prepared by:
Mrs. D. Minnix
Ext. 24076 Rm. 202
Dated: 29 June 72

A. L. DAWSON
Commander, U. S. Navy
Director, Enlisted Programs
Operations Department

Honorable Clifford P. Case
United States Senate
Washington, D. C. 20510

June 20, 1972

United States Senate

Re: Nicholas John Larionoff, Jr., USN
155-38-4441

Respectfully referred to
Commander, Navy Recruiting Command
Ballston Center Tower #3
4015 Wilson Boulevard
Arlington, Va. 22203

for such consideration as the communication herewith submitted may warrant, and for a report thereon. In duplicate to accompany return of inclosure. Serviceman states he believes he should receive bonus promised for extension or out of Navy as originally scheduled.

By direction of

Clifford P. Case

U. S. S.

CPC:d enc

JUL 3 1972

OFFICE

1055c

Code 33/hs

5 JUL 1972

Dear Senator Case:

This is in reference to your inquiry of 20 June 1972 concerning [illegible]

[illegible]

Under the [illegible] fore, your inquiry has been forwarded to the appropriate authorities within the Bureau of Naval Personnel for response. You may expect a further reply from them in the near future.

Thank you for your interest in this matter.

By direction of the Commander, [illegible]

Sincerely yours,

Prepared by:
Mrs. D. Minnix
Ext. 21076, [illegible] 202
[illegible]

[illegible]

Operations Department

Honorable Clifford P. Case
United States Senate
Washington, D. C. 20510

BEST COPY AVAILABLE

NATURE OF PROBLEM

The basic question lies in the fact that the Government, in the form of the U. S. Navy, is going to renege on my service contract. On JULY 9, 1969, I signed the Agreement to Extend Enlisment (Enclosure B), to become part of the AEF Program and its benefits.

Throughout the entire ET"A" School indoctrination I was told about the Variable Reenlistment Bonus that I would receive upon completion of my fourth year of service. It was computed as:

Base Monthly Pay	$417.60
# of Years of Extension	X 2
	$835.20
CTM Multiple (7/9/69)	X 4
	$3340.80

Using the information of Enclosure B, the expected Bonus will be:

Base Monthly Pay	$417.60
# of Years of Extension	X 2
	$835.20

The difference between Bonus (7/9/69) and Bonus (3/24/72) is computed as:

	$3340.80
-	835.20
	$2505.60

Truthfully, I feel that this is a breach of contract on the U. S. Navy's part. I Have served three years of enlistment without any blemishes on my record and have done all jobs assigned to me with the best of my ability. To verify my position, I recently

went to the Bureau of Naval Personel. After a discussion with the CTM Detailer 's Assistant, CTA1 Culver, I found out that Enclosure A is correct. It seems that the Department of Defense and the Department of the Navy feel that the CT Community is overstaffed and does not deserve VRB (M Branch only). Further discussion led to the statement that the VRB Multiple "4" will not be reinstated at the present or near future. I was told that I would receive more schooling.

The sum total of my discussions has led to the following conclusions:

A) The bonus that was in effect 7/?/69 is finished and all personel involved will receive the new, smaller bonus.

B) The Agreement to Extend Enlistment is binding according to the U. S. Navy's interpretation...

NAME: Nicholas John Larionoff Jr.

MILITARY DATA

BRANCH OF SERVICE:	U. S. Navy
SERVICE NUMBER:	155-38-4441
RATE:	Communications Technician, Maintenance 3rd Class Petty Officer (CTM-3)
DUTY STATION:	Naval Security Station S/30 S/32 3801 Nebraska Avenue Washington, D. C.
ENLISTMENT DATE:	June 23, 1969
SEPARATION DATE(S):	June 22, 1973/June 22, 1975
SCHOOLS ATTENDED:	ET "A" School Glakes, Illinois 36 Weeks "O" School Norfolk, Virginia 12 Weeks

PERSONAL DATA

EDUCATION:	High School	East Brunswick H. S.
	College	Fairleigh Dickinson U. (B. S. - Mathematics)
HOME OF RECORD:	6 Ridge Court, East Brunswick, New Jersey	
RESIDENCE AT PRESENT:	5483-110 Sheffield Court, Alexandria, Virginia	

LIST OF ENCLOSURES

A) Reproduction of Memo entitled "Variable Reenlistment Bonus"

B) Reproduction of "Agreement to Extend Enlistment

FM CNO
TO NAVOP
UNCLAS (BASEGFAM) //NO1133//
VARIABLE REENLISTMENT BONUS
A. BUPERSINST 1133.18D
1. EFFECTIVE 1 JUL 72 THE FOLLOWING CHANGES WILL BE MADE TO
THE VRB ELIGIBILITY LIST [illegible].
A. AVIATION BOATSWAIN'S MATE (LAUNCHING AND RECOVERY
EQUIPMENT) (ABE) AND MINEMAN (MN) ADDED AT MULTIPLE LEVEL THREE.
MUSICIAN (MU) ADDED AT MULTIPLE TWO LEVEL.
B. TORPEDOMAN'S MATE (TM) UPGRADED TO MULTIPLE FOUR.
C. COMMUNICATIONS TECHNICIAN ("M" BRANCH) (CTM) AND
DISBURSING CLERK (DK) WILL BE DELETED FROM ELIGIBILITY LIST.
2. EFFECTIVE IMMEDIATELY CTM'S AND DK'S REENLISTING EARLY
(INCLUDING WITHIN 90 DAYS OF EAOS) ARE NOT ELIGIBLE FOR VRB.
PARA 7H REF A REVISED.
3. VRB AWARDS FOR ALL OTHER RATINGS IN ENCL(1) OF
REF A REMAIN UNCHANGED. REVISION TO REF A FOLS.
BT
#2464
NNNN

24 MARCH 72

History of VRB Eligible Ratings/NEC's and VRB Multiples Assigned Eligibility and Multiple on or after:

Rating	1 JAN 66	20 APR 67	3 NOV 67	1 JUL 68	1 JAN 69	1 JUL 69	1 JUL 70	1 JUL 71
AC	-	-	-	1	1	3	4	4
AQ	3	4	4	4	4	4	4	4
AT	2	3	3	4	4	4	4	4
AW	-	-	-	-	4	4	4	4
AX	3	4	4	4	4	-	-	4
BT	2	3	3	4	4	4	4	4
CT	3	4	4	4	4	4	-	-
CTI	-	-	-	-	-	-	4	4
CTK	-	-	-	-	-	-	4	4
CTO	-	-	-	-	-	-	4	4
CTR	-	-	-	-	-	-	4	4
CTT	-	-	-	-	-	-	4	4
DC	-	-	2	4	4	4	4	4
DS	3	3	3	4	4	4	4	4
EM	1	3	3	4	4	4	4	4
EN	3	4	4	4	4	4	4	4
ET	-	-	-	-	-	-	-	4 (1 SEP 71)
EW	3	3	3	4	4	4	4	4
FT	1	2	2	3	3	3	3	4 (1 JAN 72)
GM	-	-	-	-	-	-	-	4
HT	2	3	3	4	4	4	4	4
IC	-	-	-	2	2	2	2	4
IM	1	3	3	4	4	4	4	4
MR	1	2	2	2	-	-	-	4
MT	-	-	-	-	-	-	4 (1SEP70)	4
PT	4	4	4	4	4	4	4	4
SO	3	3	3	4	4	4	4	4
SS	2	3	2	4	4	4	4	4
ST	-	4	4	4	4	4	4	4

Enclosure (2)

STATEMENT OF MY POSITION

All replies that I have received from the Bureau of Naval Personel have stated that the Navy will stand by the Statement that the enlistee has agreed to extend his enlistment in lieu of the extra Advanced Electronics school that he will receive.

In the Summer of 1969 I was a recent college graduate, who was seeking a job in the computor field. The Navy recruiter told me about the computor opportunities in the service and convinced me to enlist. Also let it be known that I was a prime subject for the draft. I enlisted in the Navy and spent the rest of the summer in Boot Camp. It was during my stay in Boot Camp

Field to me. It meant an additional two years of extended service.

To keep myself out of the civilian job market for an additional two years would mean the computor field would possibly shrink to the point where I could not find employment. At this time it was mentioned that I could possibly get into the computer field in the AEF Program. If I were not lucky, I would still be in the Electronics field. To add to my interest, a large bonus was mentioned. Upon further counseling, the bonus was classified at over $3000.00.

This bonus was to be given to me at the end of four years. If we take half that amount and add it to my annual wage the figure is $5000. plus all Navy medical and purchasing privilages would give me an equal status with my civilian counterpart.

The Bupers Instruction 1133.18D gives the guidelines for the use of the Variable Reenlistment Bonus. If I would have been told of its existance, I would never have gambled away my future.

I am not the superpatriot, but merely a citizen of the United States of America who recognized his call to duty and enlisted in the Navy.

I cannot believe that I am being forgotten by the U.S. Navy. an intergal part of the United States. With all

Christian conscience I cannot honor this contract. My record shows that I have performed well in these last three years. I only ask for justice. . .

/s/ Nicholas J. Larionoff
NICHOLAS J. LARIONOFF

MAY 8 1972

Dear Mr. Patten:

Thank you for your letter in behalf of Petty Officer Nicholas Larionoff, Junior, Communications Technician third class, United States Navy, concerning his non-eligibility for a Variable Reenlistment Bonus (VRB).

The Navy pays the Variable Reenlistment Bonus as a reenlistment incentive to qualified personnel having critical skills in those areas where shortages of career petty officers exist. The Navy constantly reviews the critical ratings and enlisted classifications which are VRB eligible to determine if their most current manning levels are sufficiently low to justify their continuation in this program. Although the communications technician maintenance rating was formerly VRB eligible, the most recent manning level review dictated that it be removed from the eligibility list. This was announced on 24 March 1972.

The six-year obligation incurred by Petty Officer Larionoff was for the purpose of receiving training in the Navy's Advanced Electronics Field Program. Entrance into this program did not guarantee Petty Officer Larionoff anything more than this training and as such, did not require the Navy to guarantee payment of a VRB. Entry into an agreement which prohibits changing eligibility rules for payment of VRB would unduly restrict the Navy's exercise of sound fiscal management. Petty Officer Larionoff's contractual obligation is legal and binding and may not be abrogated based on his ineligibility for VRB.

By direction of the Chief of Naval Personnel:

Sincerely yours,

R. K. Schulz
Captain, U.S. Navy
Assistant Director Enlisted Personnel

Copy to:

CO, Naval Security Station
3801 Nebraska Avenue
Washington, D.C.

OLA R. S. 4-941

Honorable Edward J. Patten
House of Representatives
Washington, D.C.

Jacket
B2h2
Prep: 28 April 72
Prep for B21 sig by R. K. SCHULZ, USN, LCDR, Pers

B2h, Rm 1825, 42888

[SEAL]

DEPARTMENT OF THE NAVY
Bureau of Naval Personnel
Washington, D.C. 20370

In Reply Refer To
Pers-B2h2-caj-l
155-38-4441
APR 27 1972

Dear Mr. Patten:

This is in reply to your recent inquiry concerning Petty Officer Nicholas Larionoff, Junior, Communications Technician third class, United States Navy.

Action is being taken to obtain information for making full reply to your inquiry. Upon its receipt you will be further advised.

By direction of the Chief of Naval Personnel:

Sincerely yours,

R. K. SCHULZ
Lieutenant Commander, USN
Special Inquiries
Enlisted Personnel Division

Honorable Edward J. Patten
House of Representatives
Washington, D.C.

Copy to:

OLA R. S. 4-941
Jacket
B2h2
Prep: 25 April 72

CONGRESS OF THE UNITED STATES
House of Representatives
Washington, D.C. 20515

April 14, 1972

Chief, Legislative Liaison
Department of the Navy
Washington, D.C. 20350

Re: Nicholas J. Larionoff, Jr.
155-38-4441
Naval Security Station
3801 Nebraska Avenue
Washington, D.C.

Dear Sir:

The captioned serviceman has visited with me in my office recently regarding the sudden cancellation of his re-enlistment bonus pay.

I am enclosing a copy of the prepared statement which he drew up for me.

I am inclined to agree with Mr. Larionoff in that this move is an unfair one. If it is impossible for him to obtain the full enlistment bonus for which you contracted him, maybe there is a possibility of cutting his time back so that he will not have to fulfill the complete time of his re-enlistment. Your serious consideration in this matter would be most appreciated.

Sincerely yours,

/s/ Edward J. Patten
Edward J. Patten

k
Enclosure

NATURE OF PROBLEM

The basic question lies in the fact that the Government, in the form of the U.S. Navy, is going to renege on my service contract. On JULY 9, 1969, I signed the Agreement to Extend Enlistment (Enclosure B), to become part of the AEF Program and its benefits.

Throughout the entire ET"A" School indoctrination I was told about the Variable Reenlistment Bonus that I would receive upon completion of my fourth year of service. It was computed as:

Base Monthly Pay	$417.60
# of Years of Extension	X 2
	$835.20
CTM Multiple (7/9/69)	X 4
	$3340.80

Using the information of Enclosure B, the expected Bonus will be:

Base Monthly Pay	$417.60
# of Years of Extension	X 2
	$835.20

The difference between Bonus (7/9/69) and Bonus (3/24/72) is computed as:

	$3340.80
	— 835.20
	$2505.60

Truthfully, I feel that this is a breach of contract on the U.S. Navy's part. I have served three years of enlistment without any blemishes on my record and have done all jobs assigned to me with the best of my ability. To verify my position, I recently went to the Bureau of Naval Personnel. After a discussion with the CTM Detailer's Assistant, CTA1 Culver, I found out that Enclosure A is correct. It seems that the Department of De-

fense and the Department of the Navy feel that the CT Community is overstaffed and does not deserve VRB (M Branch only). Further discussion led to the statement that the VRB Multiple "4" will not be reinstated at the present or near future. I was told that I would receive more schooling.

The sum total of my discussions has led to the following conclusions:

A) The bonus that was in effect 7/9/69 is finished and all personnel involved will receive the new, smaller bonus.

B) The Agreement to Extend Enlistment is binding according to the U.S. Navy's interpretation. . .

FM CNO
TO NAVOP
BT
UNCLAS (BASEGRAM) //N01133//
VARIABLE REENLISTMENT BONUS
A. SUPERSINST 1133.18D
1. EFFECTIVE 1 JUL 72 THE FOLLOWING CHANGES WILL BE MADE TO THE VRB ELIGIBLE LIST PROMULGATED BY REF A.
A. AVIATION BOATSWAIN'S MATE (LAUNCHING AND RECOVERY EQUIPMENT) (ABE) AND MINEMAN (MN) ADDED AT MULTIPLE THREE LEVEL. MUSICIAN (MU) ADDED AT MULTIPLE TWO LEVEL.
B. TORPEDOMAN'S MATE (TM) UPGRADED TO MULTIPLE FOUR.
C. COMMUNICATIONS TECHNICIANS ("M" BRANCH) (CTM) AND DISBURSING CLERK (DK) WILL BE DELETED FROM ELIGIBILITY LIST.
2. EFFECTIVE IMMEDIATELY CTM'S AND DK'S REENLISTING EARLY (INCLUDING WITHIN 90 DAYS OF EAOS) ARE NOT ELIGIBLE FOR VRB. PARA 7H REF A REFERS.
3. VRB AWARDS FOR ALL OTHER RATINGS LISTED IN ENCL (1) OF REF A REMAIN UNCHANGED. REVISION TO REF A FOLS.
BT
#2464
NNNN

24 MAR 72

MATTER OF PETITION

The basic question [illegible] the fact that the Government [illegible] in the form of the U. S. Navy, is going to renege on its [illegible] contract. On JULY 9, 1969, I signed the Agreement to [illegible] Enlistment (Enclosure B), to become part of the AEF [illegible] the Agreement.

[illegible] told about the Variable Reenlistment Bonus that I would receive upon completion of my fourth year of service. It was explained [illegible]

Base Monthly Pay	$417.60
# of Years of Extension	X 2
	835.20
CIM Multiple (7/9/69)	X 4
	$3340.80

Using the information of Enclosure B, the expected Bonus will be:

Base Monthly Pay	$417.60
# of Years of Extension	X 2
	$835.20

The difference between Bonus (7/9/69) and Bonus (3/24/72) is computed as:

	$3340.80
-	835.20
	$2505.60

U. S. Navy's part. I have served three years of enlistment without any blemishes on my record and have done all jobs assigned to me with the best of my ability. To verify my position, I recently

BEST COPY AVAILABLE

went to the Bureau of Naval Personnel. After a discussion with the CTF Detailer's Assistant, CTA1 Culver, I found out Enclosure A is correct. It seems that the Department of [illegible] and the Department of the Navy feel that the CT Community is overstaffed and does not deserve VRB (M Branch only). Further discussion led to the statement that the VRB Multiple [illegible] will not be reinstated at the present or near future. I was told that I would receive more schooling.

The sum total of my discussions has led to the following conclusions:

A) The bonus that was in effect 7/9/69 is finished and all personnel involved will receive the new, smaller bonus.

B) The Agreement to Extend Enlistment is binding according to the U. S. Navy's interpretation...

[illegible]

[illegible]

A. [illegible] 1133.1FD

1. EFFECTIVE 1 JUL 72 THE FOLLOWING CHANGES WILL BE MADE TO THE VRB ELIGIBLE LIST PROMULGATED BY REF A.

A. [illegible] (DISTRICT AND RECOVERY [illegible]) (ABC) AND MINIMAL (MN) ADDED AT MULTIPLE THREE LEVEL. [illegible] (AB) ADDED AT MULTIPLE TWO LEVEL.

[illegible]

[illegible]

[illegible]

[illegible] REENLISTING EARLY (CL DISC WITHIN 90 DAYS OF EAOS) ARE NOT ELIGIBLE FOR VRB. PARA 7H REF A REFERS.

B. VRB AWARDS FOR ALL OTHER RATINGS LISTED IN ENCL (1) OF REF A REMAIN UNCHANGED. REVISION TO REF A FOLS.

BT

#2464

NNNN

24 MAR 72

Pers-B2166-ejs-5/3

05 NOV 1970

From: Chief of Naval Personnel

[redacted]

To: Commanding Officer
Naval Security Station
3801 Nebraska Avenue, N.W.
Washington, D. C. 20390

Subj: Returnable quota; request for

Ref: (a) Your letter 871:GMM:gc 1500 ser 71053 of 27 October 1970

1. As requested by reference (a), the following returnable quotas are allocated for use by CTM3 Nicholas John [redacted], USN, [redacted];

a. Nine week MOD-28 (ASR) Portsmouth class convening 8 February 1971.

b. Three weeks low level TTY Portsmouth class convening 12 April 1971.

2. It is requested that a NAVSECGRU Data Card change be submitted upon successful completion of the above courses.

P. E. HARGRAVE
By direction

104

DEPARTMENT OF THE NAVY
NAVAL SECURITY STATION
3801 NEBRASKA AVENUE, N. W.
WASHINGTON, D.C. 20390

IN REPLY REFER TO
S71:GWM:gc
1500
Ser: 71053
27 OCT 1970

From: Commanding Officer, Naval Security Station, 3801 Nebraska Ave. N.W., Washington, D. C. 20390
To: Chief of Naval Personnel (Pers-B21)

Subj: Request for School Quotas; case of CTM3 Nicholas John LARIONOFF, USN, B17 77 88

Ref: (a) Formal Schools Catalog, NAVPERS 91769

1. In accordance with reference (a) the following temporary additional duty under instruction quotas are requested for CTM3 Nicholas John LARIONOFF, USN, B17 77 88.

a. Teletype Maintenance - MOD 28(ASR) Class C, A-160-0024 - 9 weeks duration convening 8 February 1971 at Naval Schools Command, Norfolk, Virginia.

b. Low-Level Keying Teletype Maintenance Class C, A-160-0053 - 3 weeks duration convening 12 April 1971 at Naval Schools Command, Norfolk, Virginia.

2. The following information is furnished from the service record of CTM3 LARIONOFF.

a. NEC 2403

b. TCD AUG 1972

c. EAOS 22 JUN 1975

W. H. VERNON
By direction

REINKE
10 NOV 70
TSC-5/3 of 5 NOV 70

RECEIVED
NOV 0[illegible] 1970
PERS B2166

195

OPNAV FORM 5520-1 (REV. 4-64) S/N 0107-788-1000

OPNAV INST. 5510.1 (Effective edition)

INSTRUCTIONS:

1. Forward original and first copy to Cognizant I.O.
2. Retain two (2) copies (less enclosures) for personnel file jacket and possible use in making notification under "B" or "D" Sections below. On receipt of this form with "C" section completed, this copy will be filed in the personnel file jacket for future record purposes and ALL other copies destroyed.
3. Be sure that ALL copies are legible.
4. This form will not be used for interim reports which will be made by the reporting office when appropriate.
5. Upon completion of the investigation requested in Section "A" below, the Intelligence Office will properly stamp and validate this form. The detailed report of investigation may be examined in the reporting office.
6. If the originator desires results to be forwarded to another command, complete Section "D" below. Give complete mailing address.

(A) FROM: *(Use complete mailing address)*

COMNAVSECGRU (G12) Room 4220
NAVSECSTA, WASH., D. C. 20390

REFER TO FILE: SSN: 155 38 4441

DATE: 19 Aug 1969

RANK, RATE OR GRADE: SA

SERIAL OR FILE NUMBER: B17 77 88

DATE OF BIRTH: 1 Sep 47

PLACE OF BIRTH: Newark, N. J.

TO: DIRNAVINVSERV BI

SUBJECT *(Name — last, first, middle)*: LARIONOFF, NICHOLAS JOHN, JR.

ENCLOSURE(S): DD FORM 1584 TWO Results of Interview dated 9 July 1969.

[X] ONE SET [redacted] NAC [X] ONE OPNAV FORM 5510-2 FBI FINGERPRINT CARD [X] XX FOUR DD-FORM 398, STATEMENT OF PERSONNEL HISTORY

Subject of the investigation will require access to classified material and information up to and including (check classification needed) [ ] CONFIDENTIAL [ ] SECRET [X] TOP SECRET

When investigation is required for reasons other than for access to classified information alone, cite the instruction, notice, etc., authorizing the request

Subject is to RPT SSC NTC, GLAKES, ILL, CTM SCH, CLCVN 22 SEP 1969.

REQUESTED INVESTIGATION: [X] NAC [X] BACKGROUND

DOES SUBJECT CLAIM PREVIOUS CLEARANCE(S)? *(Specify — Type, Basis, Activity and Date)* [X] NO [ ] YES

AUTHORIZED BY:

for R. A. BURNS (Signature) By direction — GS-12 (Rank) — G122G (Title)

(B) NOTICE OF CANCELLATION *(Forward to Cognizant Intelligence Office)*

It is requested that this BACKGROUND investigation be cancelled. Subject: (NAC's once initiated will not be cancelled)

[ ] RELEASED FROM ACTIVE DUTY
[ ] NO LONGER NEEDS CLEARANCE
[ ] TRANSFERRED
[ ] DISCHARGED
[ ] RESIGNED

RECORDED ON TAPE 8 DEC 1969 Finish File Pers Fl

(C) NOTICE OF COMPLETION STAMP

From: NAVINVSERVHQ
To: Chief of Naval Personnel (Pers Fl)
Report of Background Investigation
NOV 14 1969
Background investigation completed
No identifiable derogatory information developed.
[signature] HEAD, PSI

(D) CERTIFICATION BY RECEIVING COMMAND

The Subject of this request has been transferred to this command. It is certified that the investigation requested above is necessary.

NAC COMPLETED

(Signature) (Title) (Date)

Forward the results of this investigation to — 10-17-67

STATEMENT OF UNDERSTANDING
NAVPERS 222 (Rev. 2-63) *Stock No. IIA 0105 400 ,1001* SND-PPSO-6718

Prior to enlisting in the Navy or Naval Reserve, I, NICHOLAS JOHN LARIONOFF JR
(First, Middle and Last Name)

understand that:

1. I have obligated myself to serve a total period of six years in the Naval Service of the United States and that upon completion of this obligation I will be eligible for discharge;

2. Upon completion of active duty in the Navy or Naval Reserve I will be placed in or remain in the Ready Reserve if eligible therefor;

3. Service in the Ready Reserve will be for a period which when added to my active duty will total five years; upon completion of this five years satisfactory service on active duty and in the Ready Reserve I will be eligible for transfer to the Standby Reserve, and if I apply I will be transferred to the Standby Reserve for any remaining portion of my service obligation;

4. I understand that the provisions of law require satisfactory participation in the Ready Reserve unless relieved of such participation by competent authority; such participation may be satisfied annually by not less than 48 drills and not more than 17 days active duty for training or an alternative of 30 days active duty for training or other appropriate Reserve training as may be authorized; failure to carry out prescribed training may subject me to involuntary call to active duty for not more than 45 days;

5. The following methods are available in the Navy for completing my military obligations:

   a. By enlistment in the Regular Navy for six years;

   b. By enlistment for minority, three or four years in the Regular Navy, which method requires a total of five years on combined active duty and satisfactory service in the Ready Reserve with remainder of obligation in the Standby Reserve;

   c. By enlistment for six years in the Naval Reserve which method requires a period of twenty-four (24) consecutive months on active duty plus a total of four years on inactive duty in the Naval Reserve, three of which must be in the Ready Reserve. The following types of duty will not be credited toward fulfillment of the twenty-four months active duty period: Temporary Active Duty, Active Duty for Training, Special Active Duty for Training.

Nicholas John Larionoff Jr.
Signature of Enlistee—First, Middle and Last Name

(Date)

Signature of legal guardian (applicable only to applicants for enlistment in Naval Reserve who acquire 2 year continuous active duty obligation and who are under age of 18 at time of enlistment.)

23 JUN 69
(Date)

C.E.ST. MARTIN MAJ AGC
Signature of Enlisting Officer—Name, Rank and Branch of Service

STATEMENT OF UNDERSTANDING
NAVPERS 222 (Rev. 2-63)

S/N 0105-900-1000

Prior to enlisting in the Navy or Naval Reserve, I, NICHOLAS JOHN LARIONOFF JR
(First, Middle and Last Name)

understand that:

1. I have obligated myself to serve a total period of six years in the Naval Service of the United States and that upon completion of this obligation I will be eligible for discharge;

2. Upon completion of active duty in the Navy or Naval Reserve I will be placed in or remain in the Ready Reserve if eligible therefor;

3. Service in the Ready Reserve will be for a period which when added to my active duty will total five years; upon completion of this five years satisfactory service on active duty and in the Ready Reserve I will be eligible for transfer to the Standby Reserve, and if I apply I will be transferred to the Standby Reserve for any remaining portion of my service obligation;

4. I understand that the provisions of law require satisfactory participation in the Ready Reserve unless relieved of such participation by competent authority; such participation may be satisfied annually by not less than 48 drills and not more than 17 days active duty for training or an alternative of 30 days active duty for training or other appropriate Reserve training as may be authorized; failure to carry out prescribed training may subject me to involuntary call to active duty for not more than 45 days;

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   a. By enlistment in the Regular Navy for six years;

   b. By enlistment for minority, three or four years in the Regular Navy, which method requires a total of five years on combined active duty and satisfactory service in the Ready Reserve with remainder of obligation in the Standby Reserve;

   c. By enlistment for six years in the Naval Reserve which method requires a period of twenty-four (24) consecutive months on active duty plus a total of four years on inactive duty in the Naval Reserve, three of which must be in the Ready Reserve. The following types of duty will not be credited toward fulfillment of the twenty-four months active duty period: Temporary Active Duty, Active Duty for Training, Special Active Duty for Training.

Nicholas John Larionoff Jr.
Signature of Enlistee-First, Middle and Last Name

(Date)

Signature of legal guardian (applicable only to applicants for enlistment in Naval Reserve who acquire 2 year continuous active duty obligation and who are under age of 18 at time of enlistment.)

8 MAY 69
(Date)

J. J. KOLIHA CAPT USMC
Signature of Enlisting Officer-Name, Rank and Branch of Service

EXTENDED ACTIVE DUTY REQUEST

8 MAY 69
(DATE)

I, NICHOLAS JOHN LARIONOFF JR, HAVING ENLISTED THIS DATE IN THE U. S. NAVAL RESERVE FOR A PERIOD OF SIX (06) YEARS, REQUEST THAT WITHIN 120 DAYS I BE ASSIGNED TO EXTENDED ACTIVE DUTY FOR FOUR (04) [redacted] YEARS, AS AUTHORIZED BY TITLE 10, UNITED STATES CODE, SECTION 672(D). I UNDERSTAND THAT, IF QUALIFIED, I MAY ENLIST IN THE REGULAR NAVY FOR FOUR (04)/[redacted] YEARS IN LIEU OF PERFORMING SAID ACTIVE DUTY.

WITNESSED: J. J. KOLIHA CAPT USMC

✓ Nicholas John Larionoff Jr.
(APPLICANTS SIGNATURE)

RCD-EO
FORM 33 12AUG67

199

U. S. NAVY RECRUITING STATION
207 WEST 24TH STREET
(AT SEVENTH AVENUE)
NEW YORK, NEW YORK 10011

8 MAY 69
(Date)

From: Commanding Officer, U. S. Navy Recruiting Station, New York, N.Y.
To: SR Nicholas J. LARIONOFF, USNR-R 617 77 88

Subj: Orders

Ref: (a) Part B, Chapter 2, Section 11, CRUITMAN
(b) Army Regulations 40-501

1. Having enlisted in the U. S. Naval Reserve this date under the authority contained in reference (a), you are hereby assigned to the U. S. Naval Reserve (Inactive Duty).

2. Having been examined and found physically qualified for enlistment in accordance with reference (b), you are ordered to return to your current residence. You are further assigned to extended active duty on such date as will enable you to report no later than 0700 on 23 JUNE 1969 to the U. S. Navy Recruiting Representative at the Armed Forces Examining and Entrance Station 970 Broad Street, Newark, New Jersey 07102 for further transfer to the U. S. Naval Training Center, Great Lakes, Illinois.

3. You have given your home of record as: 6 Ridge Court,
East Brunswick, NJ 08816

4. Your official records will be retained by this command. In the event you should change your address, you will notify your recruiter immediately.

5. Travel expenses for return transportation from current residence, EAST BRUNSWICK, NJ, to enlisting activity for enlistment USN or extended active duty is chargeable to appropriation outlined in Article A-2406, CRUITMAN.

W. J. RENO
By direction

Copy to:
BUPERS (Pers-E3)
Service Record
NRSNYK Files
NRBS NEW BRUNSWICK, NJ

FRAUDULENT ENLISTMENT WARNIN
NAVPERS 1130/2 (REV. 10-67) S/N 0105-801-8422

FORM APPROVED
BUDGET BUREAU NO. 49-R327

INSTRUCTIONS

1. *The applicant must fill in this form in his own handwriting and must initial all corrections.*
2. *All "yes" answers except to question 1a. & b. must be explained fully under remarks.*

	YES	NO
1. MARITAL STATUS AND DEPENDENCY		
a. Are you or have you ever been married?		✓
b. Are you living with your spouse?		✓
c. Number of dependents (include wife).		✓
d. Are you a widower/widow?		✓
(If answer to e. or f. below is "yes," indicate under "remarks" the date and place, identifying the court that granted the divorce, legal separation or alimony decree as appropriate)		
e. Are you divorced?		✓
f. Is any court order or judgment directing support for children or alimony in effect against you?		✓
g. Have you anyone other than children solely or partially dependent upon you? *(If "yes," identify under "remarks" by name and mailing address.)*		✓
2. EMPLOYMENT		
a. Have you ever been employed by a foreign government?		✓
b. Have you ever been refused a fiduciary bond in connection with any employment?		✓
3. JUVENILE AND CIVIL RECORD		
a. Have you ever been arrested, charged, or held by Federal, State, or other Law Enforcement Authorities for any violation of any Federal Law, State Law, County or Municipal Law, Regulation or Ordinance? *(Prior service personnel consider only period since last active service)*	✓	
b. Have you ever been convicted of any offense, or adjudicated a youthful offender or juvenile delinquent? *(Includes violation of local ordinances and all moving traffic violations.)* This question must be answered truthfully, regardless of any advice you may have received from any person in authority to the effect that you did not have to report a particular conviction in applying for employment or to enter the services. *(If your answer is "yes," explain fully under "remarks," giving a plain language statement of what you did, approximate time of court action, name and location of court, and action taken.)*	✓	
c. Have you ever been imprisoned under sentence of any court?		✓
d. Have you ever been awarded a suspended sentence, parole, probation *(including unsupervised probation)*. Are you now under any of the foregoing or awaiting any final charges against you? *(Prior service personnel consider only period since last active service.)*		✓
e. Have you ever been arrested, convicted, or imprisoned for any crime under the laws of a foreign country?		✓
4. PERSONAL HISTORY *(required for enlistments and reenlistments)*		
a. Have you even been under the care of a psychiatrist or psychologist?		✓
b. Have you ever been a patient *(whether or not formally committed)* in any institution primarily devoted to the treatment of mental, nervous, emotional, psychological, or personality disorders?		✓
c. Have you, within the past five years, wet the bed?		✓
d. Have you ever engaged in sexual activity with another person who is the same sex as yourself?		✓
e. Are you attracted sexually or do you desire any sexual activity with persons of the same sex as yourself?		✓
(If answer to f, g, or h, below is "yes" indicated under "remarks" what drugs and what medical treatment, if any, are you receiving or did you receive?)		✓
f. Have you ever taken any narcotic, sedative or tranquilizer drugs? *(If "yes" set forth full circumstances under "remarks" including approximate times, amount taken, and period over which taken.)*		
g. Have you ever used LSD, marijuana, sniffed glue or used any other hallucinogens, hypnotics, stimulants or other known harmful or habitforming drugs and/or chemicals?		✓
h. Have you ever undergone treatment caused by indulgence in alcoholic beverages?		✓
i. Have you ever used, or been identified by, a name other than which this application is being made? *(If "yes," so state in "remarks")*		✓
j. Have you received orders to Report for induction?		✓
k. Were you ever rejected as an applicant for enlistment or induction into the armed forces:		✓
l. Draft classification 2-S		

NAVPERS 1130/2 (REV. 10-67) (BACK)

REMARKS:

ITEM 3a & 3b

DATE	PLACE	OFFENCE	DISPOSITION
5/65	MADISON TWP.	SPEEDING	$17.00

I, NICHOLAS JOHN LARIONOFF JR. swear (or affirm) that my answers to the above
NAME (First, Middle, Last)
questions have been correctly recorded and are true in all respects to the best of my knowledge and understanding. I understand that upon acceptance for enlistment this form and all other allied papers become part of the "record". I know that if I secure my enlistment by means of any willful false statement, willful misrepresentation or concealment of the information herein sought in any way, I am liable to trial by court-martial or discharge under other than honorable conditions for fraudulent enlistment. I understand that if by virtue of a fraudulent enlistment I am discharged under other than honorable conditions I may be deprived of virtually all rights as a veteran under both federal and state law and can expect to encounter substantial prejudice in civilian life because of such discharge.

NAME OF RECRUITER ASSISTING IN COMPLETION OF THIS FORM	DATE	SIGNATURE OF APPLICANT
RICHARD D. CLIFFORD, EM1, USN	23 APR 69	Nicholas John Larioneff Jr.

I have fully explained all of the above to the applicant, and the applicant is cognizant that juvenile offenses of civil arrests are not necessarily a bar to enlistment but must be admitted in order to determine eligibility for enlistment. The applicant is fully aware that any denial of, or untrue information concerning a juvenile or police record, previous military service, true marital status or dependents constitutes a fraudulent enlistment.

DATE	SIGNATURE OF RECRUITER
23 APR 69	Richard D. Clifford

S-81040

202

GOVERNMENT EXHIBIT N

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Civil Action No. 626-73

[Filed Jun. 27, 1973, James F. Davey, Clerk]

NICHOLAS J. LARIONOFF, JR., ET AL., PLAINTIFFS

vs.

THE UNITED STATES OF AMERICA

AND

HONORABLE ELLIOT RICHARDSON, ET AL., DEFENDANTS

AFFIDAVIT

Commander Robert K. Sheehan, U.S. Navy, being duly sworn, deposes and says:

1. I am an officer on active duty in the United States Navy, Commander, U.S. Navy, 584732/1110, currently serving as Head, Enlisted Program Variable Reenlistment Bonus and Pro-pay Plans Section within the Bureau of Naval Personnel. Among other things, I am responsible for organizing and planning the United States Navy's Variable Reenlistment Bonus Program. This responsibility includes the preparation and promulgation of policy pertaining to the Variable Reenlistment Bonus Program.

2. Pursuant to the authority of sections 308 and 307 of Title 37, United States Code, the Department of Defense through the Assistant Secretary of Defense (Manpower and Reserve Affairs) promulgated a Department of Defense directive, Number 1304.14, dated September 3, 1970, entitled: Award of Variable Reenlistment Bonus and Proficiency Pay for enlisted Personnel; and a Department of Defense Instruction, Number 1304.15, dated September 3, 1970, entitled: Administration of Variable

Reenlistment Bonus and Proficiency Pay Programs. The Department of the Navy implemented these directives with a Chief of Naval Personnel Instruction, Number 1133.18 E, dated 23 March 1972 as modified by change 2 of March 22, 1973, which is the latest in a long line of directives dealing with the administration of the Variable Reenlistment Bonus Program (VRB).

3. Changes in Variable Reenlistment Bonus occur periodically after review indicates the need for a change under the criteria established by the Office of the Secretary of Defense. The prime considerations in the assignment or changing of a skill to a particular multiple are the skill's career manning level, past and projected, as well as the training investment of the skill. Recommendations for inclusion, reduction, increase, or removal of skills from VRB multiples are made by the Navy to the Assistant Secretary of Defense (Manpower and Reserve Affairs). After Assistant Secretary of Defense (Manpower and Reserve Affairs) approval, these changes are promulgated to the field, generally at least 90 days in advance of the effective date of the change.

4. The recent VRB history of the Communications Technicians "M" (CTM) rating is as follows. From 20 April 1966 to 1 July 1970, the CT rating, which included the present CTM service rating (previously identified by Navy Enlisted Classifications (NEC's)), was authorized to be a multiple of four. On 1 July 1970 the CT service ratings were identified on the VRB skill listing, with CTM's continuing at multiple 4. CTM's continued at a multiple four until 1 July 1972. On 1 July 1972 the CTM's were removed from VRB eligibility, as announced in the issuance of BUPERSINST 1133.18E of 23 March 1972. Also NAVOP 49 (240236Z Mar 72) announced that CTM's would be deleted from the VRB eligibility list. Paragraph 2 of NAVOP 49 states, "2. Effective immediately CTM's and DK's reenlisting early (including within 90 days of EAOS) are not eligible for VRB. Para. 7h ref a refers." The reference alluded to was BUPERSINST 1133.18D, in effect at the time of NAVOP 49.

5. In the administration of the Variable Reenlistment Bonus Program, it is not the policy of the Department

of the Navy to promise specific eligibility for Variable Reenlistment Bonus, nor is any official authorized to make such a promise in counselling with a prospective enlistee.

/s/ Robert K. Sheehan
ROBERT K. SHEEHAN
Commander, U.S. Navy

Subscribed and sworn to before me this 15th day of May, 1973.

/s/ [Illegible]
Notary Public
My commission expires: January 7, 1975

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 626-73

NICHOLAS J. LARIONOFF, JR.
7600 Maple Avenue, Apt. 1207
Tacoma Park, Maryland 20012,
THOMAS W. DIETZ
Box 636 Building 403
Fort Myer, Virginia 22211,
JOSEPH R. TOMAINO
5615 Derby Court, Apt. A
Alexandria, Virginia 22311,
LAWRENCE E. WHITE
Box 778 Building 403
Fort Myer, Virginia 22311,
PAUL E. BOUDREAU
7514 Dover Lane
Lanham, Maryland 20801,
JOHNNIE S. JOHNSON
3267 Queenstown Drive, Apt. 1001
Mount Rainier, Maryland 20822,

and

JOHN CLAY SMITH
USS John F. Kennedy (CVA-67)
FPO New York, New York 09501
on behalf of themselves and all
others similarly situated, PLAINTIFFS

vs.

THE UNITED STATES OF AMERICA,

and

HONORABLE JAMES R. SCHLESINGER
Secretary of Defense
Room 3E880
Pentagon, Washington, D.C. 20301

HONORABLE JOHN W. WARNER
Secretary of the Navy
Room 4E686, Pentagon
Washington, D.C. 20350,
ADM. ELMO R. ZUMWALT, JR.
Chief of Naval Operations
Room 4E600, Pentagon
Washington, D.C. 20350
V. ADM. DAVID H. BAGLEY
Chief of Naval Personnel
Arlington Annex
Arlington, Virginia 20380

and

CAPT. J. W. PEARSON
Commanding Officer Naval Security Station
Naval Security Station
3801 Nebraska Avenue, N.W.
Washington, D.C. 20390, DEFENDANTS

FIRST AMENDED COMPLAINT

Now come the plaintiffs by their attorneys, Keeffe & Costikyan, and complain of the defendants as follows:

1. *Jurisdiction.* Plaintiffs institute this action for breach of contract against the defendants herein under the provisions of Title 28 U.S.C. Code § 1346 (the Tucker Act) in that each plaintiff (named and in the class) sues for a multiple of four (4) times his regular reenlistment bonus as provided in the applicable variable reenlistment bonus regulations at the time that he reenlisted, being an amount not less than approximately $3,500 but in all events less than $10,000.

2. *Venue.*

A. The defendants and each of them are officers of the U.S. Government who in their official capacity are carrying out their duties within and without the District of Columbia.

B. The defendants and each of them are inhabitants of, or are found within, the District of Columbia.

C. The claim or claims hereinafter alleged arose in the District of Columbia and in all or several of the States within the United States or with duly authorized agents of the United States acting within their contracting authority.

PLAINTIFFS AND PLAINTIFFS' CLASSES

3. Plaintiffs as indicated in the above hearing, enlisted in the U.S. Navy for an original period of four years and subsequently were selected and solicited to and did reenlist for an additional period. Plaintiffs extended their term of service to receive pay, allowances and benefits promised to them in addition to special training. They have received their special training/and are or are about to be compelled to serve this additional period without the bonus provided in their contracts.

4. The variable reenlistment bonus established under Title 37 U.S. Code § 308 was specifically designed by Congress to allow the services to induce personnel during their first enlistment to sign on for additional time. Its specific intent was to provide the services with a means of retaining young men beyond the time provided in a single enlistment with the hopes that a career service would be chosen. Prior to July 1, 1972, one of the skills most needed by the U.S. Navy was the skill of communications technician and in that regard, the plaintiffs and other members of the class, relying upon the representation of the defendants that this skill was in short supply and qualified for four times the regular reenlistment bonus, signed on during their first enlistment to undertake the training and serve as communications technicians and the plaintiffs herein did successfully complete the training so contracted for and are serving as communications technicians.

5. As a result of the efforts of the defendants to fill and provide for sufficient communications technicians in the Navy on or about 90 days prior to July 1, 1972, it became apparent that the defendants' needs had been filled by the plaintiffs and other members of the class. As a result of the plaintiffs having reenlisted, the defendants announced that effective July 1, 1972, the variable reenlistment bonus would be discontinued.

6. The precise action of the Navy with regard to the variable reenlistment bonus is: "The recent VRB history of the Communications Technicians 'M' (CTM) rating is as follows. From 20 April 1966 to 1 July 1970, the CT rating, which included the present CTM service rating (previously identified by Navy Enlisted Classifications (NEC's), was authorized to be a multiple of four. On 1 July 1970 the CT service ratings were identified on the VRB skill listing, with CTM's continuing at multiple 4. CTM's continued at a multiple of four until 1 July 1972. On 1 July 1972 the CTM's were removed from VRB eligibility, as announced in the issuance of BUPERSINST 1133.18E of 23 March 1972. Also NAVOP 49 (240236Z Mar 72) announced that CTM's would be deleted from the VRB eligibility list. Paragraph 2 of NAVOP 49 states, '2. Effective immediately CTM's and DK's reenlisting early (including within 90 days of EAOS) are not eligible for VRB. Para. 7h ref a refers.' The reference alluded to was BUPERSINST 1133.18D, in effect at the time of NAVOP 49." (Paragraph 4, Affidavit of Commander Robert K. Sheehan, U.S. Navy, defendants' Exhibit N, dated May 15, 1973.)

7. The defendants have wrongfully, illegally and without proper authority applied their decision of reduction and elimination of the variable reenlistment bonus retroactively to the plaintiffs and other communications technicians in this class. See: BUPERSINST 1133.18E, 23 March 1972, page 3, paragraph 7, defendants' Exhibit D. To the extent that the defendant, the Navy, has implemented its denial of the bonus to the personnel reenlisting within 90 days preceding July 1, 1972, and the plaintiffs have reenlisted long before the 90 days prior to July 1, 1972, such denial of the variable reenlistment bonus is directly contrary to the provisions of Department of Defense directive No. 1304.14 dated September 3, 1970, paragraph F, page 11, defendants' Exhibit A, which reads in pertinent part:

"*Reduction and Termination of Awards.* When a military skill is designated for reduction or termination of award an effective date for reduction or termination of awards shall be established and announced to the field at least 90 days in advance. All awards on or after that effective date in military skills designated for reduction of award level will be at the level effective that date and no new awards will be made on or after the effective date in military skills designated for termination of awards."

Thus, in interpreting their regulations in such a manner as to have retroactive effect, the defendants have breached their contracts with the plaintiffs herein to the serious financial detriment of the plaintiffs and in a manner material to the plaintiffs' reenlistment contracts.

8. The class or classes of person represented by the plaintiffs listed below include:

a. All persons in the U.S. Navy who reenlisted for an additional period prior to July 1, 1972, in a critical skill training program pursuant to § 308(g), Title 37 U.S. Code, that as a communications technician had a variable bonus multiple of four prior to the above date and which was subsequently eliminated upon that date.

1. Nicholas J. Larionoff, Jr.
2. Thomas W. Dietz
3. Joseph R. Tomaino
4. Lawrence E. White
5. Paul E. Boudreau
6. Johnnie S. Johnson
7. John Clay Smith

DEFENDANTS

9. Defendants are the United States of America and officials in the U.S. Department of Defense or the U.S. Navy responsible for its decisions. Each of these defendants is sued in its official capacity.

NEED FOR "CLASS ACTION" PROCEDURES

10. The aforesaid class is so numerous and geographically so widely situated and distributed that joinder of all members is impracticable. There are questions of law and fact common to each class. The claims of the representative plaintiffs are typical of the claims of the class and plaintiffs will fairly and adequately protect the interests of the class.

11. The questions of law and fact common to the members of the aforesaid class predominate over any questions affecting only individual members and a class action is superior to other available methods for fair and efficient adjudication of the controversy.

CONTRACT VIOLATION

12. Each of the plaintiffs and the class they represent executed reenlistment commitments in the U.S. Navy prior to July 1, 1972 in the communications technicians class.

13. Before and after the period in which plaintiffs executed reenlistment commitments their pay allowances and benefits were fixed by the defendants pursuant to § 308(g) Title 37 of the U.S. Code and applicable regulations thereunder.

14. On and after July 1, 1972, the defendants illegally, wrongfully and without proper authority interpreted their regulations retroactively to breach the reenlistment contracts which the plaintiffs had signed.

15. Although the plaintiffs have performed and continue to perform all that is required of them under their reenlistment contracts, the defendants have failed to perform and continue to fail to perform the conditions of said contracts on their part to be performed in that they have failed to pay to plaintiffs the variable reenlistment bonuses to which they are entitled as aforesaid.

16. In addition to the breach of contract with the plaintiffs herein and incidental thereto, the defendants by means of their unique position as an employer possessed with both guns and jails, have effectively thwarted the

plaintiffs options to rescind the reenlistment contracts in most cases. Accordingly, the plaintiffs have been and/or are about to be compelled to serve an enlistment against their will. It is not known whether members of the class have been subjected to hostilities, captured by enemy forces, are missing in action, wounded or otherwise maimed and injured, all while the defendants have breached their contracts with them. It is not known whether members of the class have been stationed at hardship stations.

RELIEF SOUGHT

WHEREFORE, plaintiffs pray that:

1. The action be certified pursuant to Rule 23 of the Federal Rules of Civil Procedure as a class action for all persons serving in the U.S. Navy who reenlisted for an additional period of duty as communications technicians prior to July 1, 1972 under which they are entitled pursuant to Title 37 U.S. Code § 308(g) and regulations thereunder, to variable reenlistment bonuses equal to four times their regular reenlistment bonuses, and who have been denied such bonus, or the heirs or personal representatives of any such persons.

2. The defendants be ordered to pay to each of the plaintiffs the bonus provided by his contract and/or the contracts of the plaintiffs be deemed rescinded and declared of no further force and effect and the defendants be ordered to grant to each of the plaintiffs an honorable discharge pursuant to Title 10 U.S. Code § 6291.

3. The defendants be ordered to pay the real value of the services rendered by the plaintiffs to the extent such value is in excess of the amount provided by the aforesaid contracts.

4. The defendants be ordered to pay to the plaintiffs any and all damages suffered by the plaintiffs by virtue of their wrongful detention by the defendants, including death or serious injury in a combat zone or service in remote and isolated regions.

5. There be granted such other and further relief as is necessary and proper.

KEEFFE & COSTIKYAN

/s/ Stephen Daniel Keeffe
STEPHEN DANIEL KEEFFE
Attorney for Plaintiffs
733 15th Street, N.W.
Washington, D.C. 20005
783-5775

Of Counsel

/s/ John A. Keeffe
JOHN A. KEEFFE
KEEFFE & COSTIKYAN
501 Fifth Avenue
New York, New York 10017
(212) 682-2166

I certify that I served Asst. U.S. Attorney Michael Katz at his office 6:18 p.m. Aug. 17, 1973.

/s/ Stephen Daniel Keeffe

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 626-73

NICHOLAS J. LARIONOFF, JR., ET AL., PLAINTIFFS

v.

UNITED STATES OF AMERICA, ET AL., DEFENDANTS

ANSWER TO FIRST AMENDED COMPLAINT

Come now the defendants, by their attorney, the United States Attorney for the District of Columbia, and in answer to plaintiffs' first amended complaint, respectfully show to the Court as follows, to wit:

First Defense

The amended complaint fails to state a claim upon which relief can be granted.

Second Defense

The Court lacks jurisdiction over the subject-matter of this action.

Third Defense

Plaintiffs have failed to exhaust available administrative remedies.

Fourth Defense

This action is an unconsented suit which is barred by the doctrine of sovereign immunity.

Fifth Defense

This action may not properly be maintained as a class action.

Sixth Defense

Answering specifically the numbered paragraphs of the amended complaint, defendants admit, deny and aver as follows:

1. No answer is required to jurisdictional allegations.

2. Subparagraphs A and B are admitted. No answer is required to subparagraph C, which is a conclusion of law.

3. Denied, except that defendants admit that each of the named plaintiffs enlisted in the U.S. Navy at divers times and places for an original period of four years. Defendants further aver that each named plaintiff at divers times and places signed an agreement to extend his said enlistment for two years, in consideration and for the purpose of receiving advanced training, and that all plaintiffs received said advanced training.

4. No answer is required to the argumentative averments and conclusions of law contained in paragraph 4 of the amended complaint. Defendants are without knowledge or information sufficient to form a belief as to what plaintiffs and other members of the purported class herein relied upon in agreeing to extend their enlistments as aforesaid. Defendants admit the plaintiffs agreed to extend their enlistments as aforesaid for the purpose of undertaking training as Communications Technicians (maintenance), successfully completed the said training, and are serving as Communications Technicians (maintenance).

5. Defendants admit that the variable reenlistment bonus for Communications Technicians (maintenance) was discontinued effective July 1, 1972, and deny that such action was taken "as a result of the plaintiffs having reenlisted." The remaining averments are argumentative and do not require an answer.

6. Defendants respectfully refer the Court to the affidavit of Commander Sheehan quoted in paragraph 6 of the amended complaint as being the best evidence of its contents.

7. No answer is required to the conclusions of law contained in paragraph 7 of the amended complaint.

8.-11. No answer required.

12. Denied, and defendants aver that plaintiffs executed agreements to extend their enlistments prior to July 1, 1972.

13. No answer is required to the conclusions of law contained in paragraph 13 of the amended complaint.
14. Denied.
15. Denied.
16. No answer is required to the argumentative and pejorative allegations contained in paragraph 16 of the amended complaint.

Seventh Defense

Plaintiffs' claims for damages against the individual defendants herein are barred by the doctrine of official immunity.

Eighth Defense

Plaintiffs' claim for "the real value of the services rendered by the plaintiffs to the extent such value is in excess of the amount provided by the aforesaid contracts" is barred by sovereign immunity and not otherwise cognizable under law.

Ninth Defense

Plaintiffs' claim for "damages suffered by the plaintiffs by virtue of their wrongful detention by the defendants" as against the defendant United States of America is barred pursuant to Title 28, United States Code, section 2680(h).

HAROLD H. TITUS, JR.
United States Attorney

ARNOLD T. AIKENS
Assistant United States Attorney

MICHAEL A. KATZ
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing Answer to First Amended Complaint has been made upon plaintiff by mailing a copy thereof to Stephen Daniel Keeffe, Esq., 733 15th Street, N.W., Washington, D.C. 20005, on this 22 day of August, 1973.

MICHAEL A. KATZ
Assistant United States Attorney
U.S. District Courthouse
Room 3433
426-7381

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 626-73

NICHOLAS J. LARIONOFF, ET AL., PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, ET AL., DEFENDANTS

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned counsel for the parties herein that the plaintiffs Boudreau, Dietz, Larionoff, Smith, Tomiano and White may claim and be paid regular bonuses pursuant to 37 U.S.C. § 308(a), and that acceptance of such amounts by them shall not constitute a waiver of any claim for any other bonus to which they may be entitled under law.

STEPHEN DANIEL KEEFFE
Attorney for Plaintiff

MICHAEL A. KATZ
Assistant United States Attorney
Attorney for Defendants

Dated: December 13, 1973

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil No. 626-73

MICHAEL J. LARIONOFF, JR., ET AL., PLAINTIFF

vs.

UNITED STATES OF AMERICA, ET AL., DEFENDANT

NOTICE OF APPEAL

Notice is hereby given this 26th day of November, 1973, that Defendants hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 28th day of September, 1973 in favor of Plaintiffs against said Defendants.

Michael A. Katz
Attorney for Defendants

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 626-73

[Filed Nov. 27, 1973, James F. Davey, Clerk]

NICHOLAS J. LARIONOFF, JR., ET AL., PLAINTIFFS

vs.

THE UNITED STATES OF AMERICA, ET AL., DEFENDANTS

NOTICE OF APPEAL

Notice is hereby given that Nicholas J. Larionoff et al., plaintiffs above named, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the order of this court granting summary judgment for plaintiffs, but limiting recovery, not ordering disclosure of the class' names by defendant and inadequately compensating plaintiffs' attorneys thereunder.

Respectfully submitted,

KEEFFE & COSTIKYAN

/s/ Stephen Daniel Keeffe
STEPHEN DANIEL KEEFFE
733 15th St., N.W.
Washington, D.C. 20005
783-5775
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal was served upon Michael Katz, Attorney for defendants, by hand delivering a copy thereof to him at his office at the United States Court House, Washington, D.C. this 27th day of November 1973.

Respectfully submitted,

KEEFFE & COSTIKYAN

/s/ Stephen Daniel Keeffe
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 626-73

[Received Mar. 7, 1974, Appellate Court, Civil Division]

NICHOLAS J. LARIONOFF, JR., ET AL., PLAINTIFFS

vs.

THE UNITED STATES OF AMERICA, ET AL., DEFENDANTS

MOTION FOR RECONSIDERATION

Pursuant to Fed. R. Civ. P. 60(b), plaintiffs respectfully move this Court for Reconsideration of the Order of September 28, 1973 entered in this civil action. Plaintiffs specifically move this Court to so reconsider and;

1. Order that rescission of all or part of the two year extension period of service be allowed as an additional remedy to the plaintiff class for defendants' breach of plaintiffs' employment contracts;

2. Order that, pursuant to Fed. R. Civ. P. 23(d), defendants provide plaintiffs counsel with the names and addresses of all class members, and pursuant to Fed. R. Civ. P. 23(c) that notice to the class be had; and

3. Order that plaintiffs' counsel be awarded reasonable attorneys' fees, with specific consideration of the factors therefor set out herein in plaintiffs' Points and Authorities in support of this Motion.

Respectfully submitted,

KEEFFE & COSTIKYAN
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 626-73

[Filed Mar. 26, 1974, James F. Davey, Clerk]

NICHOLAS J. LARIONOFF, JR., ET AL., PLAINTIFFS

v.

THE UNITED STATES OF AMERICA, ET AL., DEFENDANTS

ORDER

This matter is before the Court on Plaintiffs' March 6, 1974 Motion for Reconsideration of the Court's September 28, 1973 Order granting the Plaintiffs Summary Judgment and awarding the Plaintiffs' attorneys $14,729.00 in attorney's fees.

Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, the Plaintiffs request the Court to reconsider three aspects of its September 28th Order, namely: (1) the extent of relief; i.e., Plaintiffs seek a recission of their employment contract in addition to the Court's decree that the Plaintiffs are entitled to a Variable Reenlistment Bonus under their contracts; (2) the Court's failure to order a disclosure of the names of the members of the class; and (3) the award of attorney's fees which Plaintiffs' counsel consider inadequate.

On November 27, 1973, Plaintiffs appealed the Court's September 28th Order for the same reasons presented in this Motion. The record in this case was docketed in the Court of Appeals on February 7, 1974.

Within the time for noting an appeal, a district court can grant relief from a final judgment if appropriate under one of the six provisions of Rule 60(b). However, that rule is not a substitute for appeal. 6A Moore's Federal Practice ¶ 60.30[1] at 417. As the appeal is now pending, this Court lacks jurisdiction to grant re-

lief. *Boston Television Corp.* v. *F.C.C.*, 463 F.2d 268, 280 (C.A.D.C. 1971).

Even if the Court had jurisdiction to reconsider its Order, the Court finds that the Plaintiffs have made no showing of entitlement to relief under any of the specific provisions of Rule 60(b). Upon conclusion of the appeal, the Court is willing to reconsider the award of attorney's fees, so that the award provides for counsels' time, efforts and skill on appeal. The original award, however, in the Court's candid opinion, properly reflects counsels' efforts, skill and assistance rendered the Court. See *Freeman* v. *Ryan*, 133 U.S. App. D.C. 1, 3, 408 F.2d 1204, 1206 (1968). Therefore, it is this 26th day of March, 1974,

ORDERED that the Plaintiffs' Motion for Reconsideration be and the same is hereby denied.

/s/ Charles R. Richey
CHARLES R. RICHEY
United States District Judge

SUPREME COURT OF THE UNITED STATES

No. 76-413

UNITED STATES, ET AL., PETITIONERS

v.

NICHOLAS J. LARIONOFF, JR., ET AL.

ORDER ALLOWING CERTIORARI. Filed December 6, 1976

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1976 226374 37

Supreme Court, U. S.
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NOV 17 1976
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-413

UNITED STATES OF AMERICA, *et al.*,

Petitioners,

v.

NICHOLAS J. LARIONOFF, JR., *et al.*,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-413

UNITED STATES OF AMERICA, *et al.*,

Petitioners,

v.

NICHOLAS J. LARIONOFF, JR., *et al.*,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

QUESTION PRESENTED

Whether there are special and important reasons for this Court in its sound judicial discretion under Rule 19, Supreme Court Rules, to review on writ of certiorari the decision of the United States Court of Appeals for the District of Columbia Circuit in *Larionoff, et al. v. United States, et al.*, 533 F.2d 1167 (D.C. Cir. 1976), pet. for rehearing denied, 533 F.2d 1188?

STATEMENT OF FACTS

In 1965 the President of the United States through his Secretary of Defense determined that United States military personnel could be induced to extend their enlistments for the first time if the Secretary was authorized by Congress to place special bonuses at this career decision point. The Congress of the United States agreed and a Variable Reenlistment Bonus (VRB) program was initiated. Respondents and members of their class were induced to extend their enlistments for two or more years in consideration of these bonuses. After completing advanced training and entering into their particular skill, respondents were denied their promised bonuses. Of the seven named representative respondents, six were denied their bonuses by administrative regulation of the United States Navy and the seventh, it is additionally alleged, by act of Congress.

STATEMENT OF REASONS FOR DENYING REVIEW

1. Six of seven representative respondents (hereinafter referred to as the "Larionoff Class") were denied their VRBs by administrative regulation of the United States Navy. The Government's petitions on this point have attempted to create a conflict among the Circuits for the Larionoff Class where no conflict exists.[1] Neither *Carini v. United States*, 528 F.2d 738 (1975) in the Fourth Circuit nor *Collins v. Rumsfeld*, C.A. 9. Nos. 75-2935, 75-2967, 75-3238, and 75-3559 (decided Sept. 27, 1976) in the Ninth Circuit addresses this point. Indeed, the Fourth Circuit stated at footnote seven of its opinion that it did not address itself to a Larionoff

[1] We note that the question presented in the *Larionoff* petition is identical to the question presented in the Memorandum for Respondents in *Carini v. United States*, No. 75-1695.

Class point and stated that ". . . a court might reasonably hold the Navy bound by its representations, . . .". The opinions of the District Court and the Court of Appeals for the District of Columbia, uncontradicted by the Government's petition on this point except in the interest of a consistent result among all respondents, should be affirmed. (Pet. App. 55a).[2]

2. Respondent representative class member Johnson (hereinafter referred to as the "Johnson Class") has become the real focus of the Government's petition. The Johnson Class members are alleged to be barred from their VRBs because of the repeal of the authorizing statute. The District of Columbia Circuit held that not withstanding this repeal there was no legal justification to apply this repeal retroactively to the Johnson Class. (Pet. App. at 63a, note 8). In doing so the District of Columbia Circuit rejected a parade of horribles contrived by the Government on appeal and then forged anew in a Petition for Rehearing. At the core of these exhaustive opinions lies a recognition of the fact that the Government has the power to promise a specific sum of money in return for services to be performed by United States military personnel. (Pet. App. 61a). In addition thereto, the Government having made this promise could not subsequently refuse to honor its promise and yet demand these class members serve two or more years of their extended enlistments. Nor could the Government label its promise a gratuity, as opposed to a contract right, or the repeal of VRBs as the exercise by Congress of a paramount power. This Court should affirm the findings of the panel in the District of Columbia Circuit based upon the record as a whole together with the exhaustive opinions in the Circuit. There is

[2] Appendix A to the Government's Petition for Writ of Certiorari is in error at page 23(a) at line 7 and should read ". . . when the VRB award level was at a *multiple of two but entered into extended service when the* multiple was set at four would receive the higher award level." (Italics indicates error.)

no need to hear this case for the Johnson Class must succeed or fail based upon the panel's opinions. To the extent that the *Carini* and *Collins* opinions are inconsistent they should be reversed.

3. The practical considerations which the Government cites in favor of review are more persuasive of summary affirmance of all parts of the opinion below. It is the Government, not the representative respondents, that chose to sow the seeds of conflict throughout the federal judiciary. Having chosen to argue inconsistent rights in over 40 law suits, is it no wonder errors have been made? Also of paramount importance to the Government must be the concern of an all volunteer military service and each prospective and present members reliance upon his or her contract. Lastly there are rights of the approximately 36,000 enlisted personnel which have been too long denied and should be swiftly affirmed by order of this Court.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

KEEFFE BROTHERS

by _____
Stephen Daniel Keeffe

Of Counsel: *Attorneys for Respondents.*

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November 17, 1976

Supreme Court, U. S.
FILED
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No. 76-413

In the Supreme Court of the United States

OCTOBER TERM, 1976

UNITED STATES OF AMERICA, ET AL., PETITIONERS

v.

NICHOLAS J. LARIONOFF, JR., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE PETITIONERS

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In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-413

UNITED STATES OF AMERICA, ET AL., PETITIONERS

v.

NICHOLAS J. LARIONOFF, JR., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CURCUIT

BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a–50a) is reported at 533 F. 2d 1167. The statement of the court of appeals denying the petition for rehearing (Pet. App. 54a–64a) is reported at 533 F. 2d 1188. The opinion of the district court (Pet. App. 65a–79a) is reported at 365 F. Supp. 140.

JURISDICTION

The judgment of the court of appeals was entered on February 17, 1976. A timely petition for rehearing, and suggestion for rehearing *en banc,* were denied

respectively on April 29, 1976 (Pet. App. 53a–54a), and April 21, 1976 (Pet. App. 51a–52a). By order of July 23, 1976, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including August 27, 1976, and by order of August 17, 1976, further extended the time for filing a petition to and including September 26, 1976. The petition for a writ of certiorari was filed on September 21, 1976, and was granted on December 6, 1976 (App. 226). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, at the time they agreed to extend their enlistments in the United States Navy, respondents acquired by contract or under the applicable statutes and regulations a vested right to the payment of "variable reenlistment bonuses."

STATUTES AND REGULATIONS INVOLVED

The Act of September 7, 1962, Pub. L. 87–649, 76 Stat. 467, and Section 3 of the Act of August 21, 1965, Pub. L. 89–132, 79 Stat. 547 [formerly 37 U.S.C. 308];[1] the Armed Forces Enlisted Personnel Bonus Revision Act of 1974, Pub. L. 93–277, 88 Stat. 119 [37 U.S.C. (Supp. V) 308, 308a]; 37 U.S.C. 906; and pertinent provisions of the Department of Defense

[1] These Acts were amended in 1968 by Section 3(1) of Pub. L. 90–623, 82 Stat. 1314, which restated the existing provisions but substituted "Secretary of Transportation" for "Secretary of the Treasury."

Pay and Entitlement Manual, are set forth at Pet. App. 82a–89a, 99a–100a.

Department of Defense (DOD) Directive 1304.14 (September 3, 1970); DOD Instruction 1304.15 (September 9, 1970); Navy Bureau of Personnel (BUPERS) Instruction 1133.18B (December 19, 1968); Navy BUPERS Instruction 1133.18E (March 23, 1972) (except for the last page); Navy BUPERS Instruction 1133.18E (March 22, 1973); and former Navy BUPERS Manual, Article C–1407, are set forth at App. 36–145.

Pertinent provisions of 10 U.S.C. 509; 32 C.F.R. 730.4 and 32 C.F.R. 730.6; the last page of Navy BUPERS Instruction 1133.18E (March 23, 1972); pertinent provisions of Navy letter Pers–B2131–gn–56 (August 31, 1966); Navy BUPERS Instruction 1430.14C (August 30, 1968); former Navy BUPERS Manual, Article C–1403; and Navy BUPERS Manual, Articles 1040300 and 1050150, are set forth in the addendum to this brief (Add., *infra*, pp. 44–103).

STATEMENT

This class action was brought by seven enlisted members of the United States Navy to recover reenlistment bonuses to which they believed they were entitled. Alternatively, they sought rescission of the agreements they had executed extending by two years their original four-year enlistments. In the event the court granted their request for rescission, they sought additionally an order directing the defendants to

award each of them an honorable discharge from the Navy following completion of their original enlistment obligations (Pet. App. 3a, 9a n. 14).

1. At the time of their original enlistments, or shortly thereafter, respondents individually decided to participate in the Navy's Advanced Electronics Field (AEF) training program. The AEF program, which was limited to enlisted personnel with a minimum service obligation of six years, provided training in various electronics fields.[2] Service personnel who successfully completed the program earned a specialized service rating, corresponding to the particular skill they had acquired, and were guaranteed advancement in rank and pay grade.[3]

In order to qualify for the AEF program, respondents agreed—in each case, before completing basic training[4]—to extend their original enlistments. The

[2] In recent years the electronic equipment used by the United States Navy, and the tasks of operating and maintaining that equipment, have become increasingly complex. In order to recruit and train sufficient numbers of personnel to handle this equipment properly, the Navy established the AEF program in 1966. Recruits enter the AEF program after completing their basic training, at which time they are assigned to a Navy service school where they receive specialized training in a particular branch of electronics (Add., *infra*, pp. 53–57).

[3] Navy BUPERS Instruction 1430.14C (August 30, 1968) (Add., *infra*, pp. 59–68).

[4] John Clay Smith enlisted in the Navy on October 1, 1968, and executed his extension agreement on October 15, 1968; Paul E. Boudreau enlisted on January 3, 1969, and executed his extension agreement on January 31, 1969; Joseph R. Tomaino enlisted on March 28, 1969, and executed his extension agreement on April 14, 1969; Nicholas J. Larionoff, Jr., enlisted on June 23, 1969, and

"Agreement to Extend Enlistment" respondent Larionoff executed is typical of those executed by other class members; it stated in pertinent part as follows (App. 157):

> I[,] NICHOLAS JOHN LARIONOFF JR., * * * having enlisted in the Navy of the United States on 23 JUN 69 for FOUR years, in consideration of the pay, allowances, and benefits which will accrue to me during the continuances of my service, voluntarily agree to extend my enlistment as authorized by Section 5539, of Title 10, United States Code,[5] and the regulations issued pursuant thereto. I voluntarily agree to extend my enlistment for a period of TWO years from the date of expiration thereof, subject to the provisions and obligations of my said contract of enlistment of which this, my voluntary agreement, shall form a part.
>
> REASON FOR EXTENSION: "Training (Advanced Electronics Field (AEF) Program * * *). I understand this extension agreement becomes binding upon execution and thereafter

executed his extension agreement on July 9, 1969; Thomas W. Dietz enlisted on September 3, 1969, and executed his extension agreement on September 26, 1969; Johnnie S. Johnson enlisted and executed his extension agreement on August 28, 1970 (App. 30–34). Lawrence E. White enlisted on March 13, 1969, entered the AEF program and signed a document acknowledging his six-year service commitment on April 1, 1969 (see n. 7 *infra*), and executed his extension agreement on July 23, 1969 (App. 35).

[5] U.S.C. (1964 ed.) 5539 was repealed on January 2, 1968. Section 2(a)(3) of Pub. L. 90–235, 81 Stat. 756. Similar provisions now are codified at 10 U.S.C. 509 (Add., *infra*, p. 44) and 37 U.S.C. (Pet. App. 89a).

may not be cancelled except as set forth in BUPERS Manual, Article C–1407."[6]

* * * * *

SUBSCRIBED and sworn to * * * this 9th day of JULY 1969 and this contract is hereby perfected and accepted for and on behalf of the United States. Service thereunder to begin from the date following the date the original contract of enlistment would have expired had it not been extended. This is the FIRST extension of current enlistment.[7]

Respondents and other class members subsequently participated in the AEF training program, and completed it successfully. Upon completing the program, they were advanced to the rank of petty officer third

[6] Navy BUPERS Manual, Article C–1407, is set forth at App. 138–145. Article C–1407 has been superseded by similar provisions appearing at Navy BUPERS Manual, Article 1050150 (Add., *infra*, pp. 94–103).

[7] In addition to executing agreements to extend their enlistments, respondents and other class members executed documents requesting assignment to the AEF program and acknowledging their six-year service commitments (App. 30–35). The latter documents provided in pertinent part as follows (see Pet. App. 5a–6a): "I fully understand that, by virtue of having been enlisted in the U.S. Navy as a [seaman, level of prior education] I am guaranteed assignment to either one of a group of service schools or to [*sic*] duty in a specific apprenticeship field upon successful completion of recruit training. I desire to waive my rights guaranteed by my enlistment contract, and I hereby request that my rate be changed in equal pay grade to [seaman, level of prior education, advanced electronics field]. This change of rate is requested for the purpose of: Assignment to the advanced electronics field program. The provisions of this program, the category to which my rate will be changed and the six (06) year[ ] service obligation have been fully explained to me."

class in the "Communications Technician-Maintenance" (CTM) service rating and were advanced in pay grade from "E–3" ($128.70 per month) to "E–4" ($177.90 per month) (Pet. App. 6a–8a; see Navy BUPERS Instruction 1430.14C (August 30, 1968) (Add., *infra*, pp. 59–68)).[8] Respondents also executed, at the time of their promotions, a document acknowledging that they had received the training they had sought in extending their original enlistments and had been advanced accordingly in pay grade.[9]

[8] Smith received a CTM rating on July 16, 1969; Boudreau on January 16, 1970; White on January 28, 1970; Larionoff on March 9, 1970; Tomaino on March 27, 1970; Dietz on April 17, 1970; and Johnson on August 10, 1971 (App. 30–35).

[9] The document executed by respondent Larionoff, which is similar to those executed by other class members, provided in pertinent part as follows (see Pet. App. 6a n.7): "I understand and agree that upon my being advanced to pay grade E–4 in accordance with [Navy BUPERS Instruction 1430.14 (App. 11a–15a)] series, that page 1A ["Agreement to Extend Enlistment"] date 09 JUL 69, which was executed for the purpose of AEF Program, will become binding and will serve to fulfill the obligated service requirements for automatic advancement. I understand that any future cancellation of obligated service requirements for the purpose of AEF Program will not serve as reason for cancellation of page 1A dated 09 JUL 69 except as set forth in [Navy BUPERS Manual, Article 1050150 (Add., *infra*, pp. 94–103)]."

If respondents, through no fault of their own, had not received the special training they had been promised prior to the "operative" dates of their "Agreement[s] to Extend Enlistment," the Navy would have been required to cancel the agreements. Navy BUPERS Manual, Article C–1407(8)(b) (4) and (5) (App. 144). An extension of enlistment becomes "operative"—that is, "goes into effect"—"on the date next following the normal date of expiration of enlistment" (Article C–1407(1)(c) (App. 138)).

At the times respondents executed their "Agreement[s] to Extend Enlistment," 37 U.S.C. 308 (a) and (b),[10] which have since been amended,[11] obligated the Navy to pay a "regular reenlistment bonus" to persons who reenlisted for the first time within three months after their discharge or release date or who extended their enlistment for at least two years. The regular reenlistment bonus was not available, however, to persons who reenlisted during their "prescribed period of basic recruit training" or "after completing 20 years of active Federal service." For persons reenlisting for the first time, the amount of the regular reenlistment bonus was computed pursuant to the following formula: "[m]onthly basic pay to which member was entitled at the time of discharge or release" multiplied by the "[n]umber of years specified in reenlistment contract, or six, if none specified," up to a maximum of $2,000.[12]

In addition, the Navy was authorized by 37 U.S.C. 308(g),[13] which has since been superseded,[14] to pay a

[10] Act of September 7, 1962, Pub. L. 87-649, 76 Stat. 467 (Pet. App. 82a-84a). This statute was restated and amended in respects not pertinent here by Section 3(1) of Pub. L. 90-623, 82 Stat. 1314 (se n. 1, *supra*).

[11] Armed Forces Enlisted Personnel Bonus Revision Act of 1974, Pub. L. 93-277, 88 Stat. 119 (Pet. App. 86a-87a).

[12] Act of September 7, 1962, Pub. L. 87-649, 76 Stat. 467 (Pet. App. 83a-84a).

[13] Section 3 of the Act of August 21, 1965, Pub. L. 89-132, 79 Stat. 547 (Pet. App. 85a).

[14] Armed Forces Enlisted Personnel Bonus Revision Act of 1974, Pub. L. 93-277, 88 Stat. 119, 37 U.S.C. (Supp. V) 308a (Pet. App. 88a).

second reenlistment bonus, commonly called a "variable reenlistment bonus" (VRB), to service personnel who were eligible to receive a regular reenlistment bonus and who possessed a "critical military skill." Although Congress specified the maximum amount that could be paid to any service member in the form of a variable reenlistment bonus,[15] it left the designation of "critical military skills" as well as the precise amount of variable bonus to be awarded in individual cases to determination "[u]nder regulations to be prescribed by the Secretary of Defense." 37 U.S.C. 308(g) (superseded) (Pet. App. 85a).[16]

Pursuant to the authority conferred upon him by 37 U.S.C. 308(g), the Secretary of Defense issued regulations governing administration of the VRB program.[17] Those regulations specified, *inter alia*, the criteria to be used in determining whether particular

[15] 37 U.S.C. 308(g) provided that the maximum amount a service member could be paid in the form of a variable reenlistment bonus could not exceed four times the amount of the regular reenlistment bonus to which that service member was entitled. The statute also provided for payment of the variable bonus "in equal yearly installments in each year of the reenlistment period" unless the Secretary determined "in meritorious cases" that payment in fewer installments was "in the best interest of the members" (Pet. App. 85a).

[16] Respondents technically had not reenlisted but rather had extended their enlistments. However, although 37 U.S.C. 308(g) referred only to reenlistments, a service member who extends his enlistment is "entitled to the same pay and allowances as though he had reenlisted." 37 U.S.C. 906 (Pet. App. 89a).

[17] DOD Directive 1304.14 (September 3, 1970) (App. 36-52) and DOD Instruction 1304.15 (September 9, 1970) (App. 53-91).

skills were sufficiently "critical" to the various Services to be included in the VRB program. The regulations also set forth the criteria to be used in assigning multiples, from one to four, to those skills in calculating the amount of the variable bonus to be paid to individual service members.[18]

The Secretary delegated to the respective Services the tasks of designating the skills to be included in the VRB program and assignment of the multiples to be used in computing variable bonuses, subject to the Secretary's review and prior approval.[19] The Secretary also instructed the Services to conduct an annual review of the retention and personnel levels in the various military skills that had been included in the VRB program to determine whether the variable bonuses authorized to be paid to persons possessing those skills should be reduced or terminated.[20]

The implementing regulations the Navy subsequently issued designated by service ratings those skills for which the Navy had a "critical" need and assigned multiples to those skills depending upon the relative urgency of the Navy's need (measured in terms of personnel shortages and the cost of train-

[18] DOD Directive 1304.14, para. IV.D and IV.E (App. 42–48); DOD Instruction 1304.15, para. IV.D and V.A (App. 54–59).

[19] DOD Directive 1304.14, para. IV.B., IV.E. and V.A. (App. 40–41, 47–48, 50–51).

[20] Specifically, the Secretary's regulations required the Services to conduct "an annual review of the retention and career manning situation in any military specialty that has attained or is projected to attain a career manning level of more than 105 percent" of the established level of need. DOD Directive 1304.14, para. IV.F. 1. (App. 49).

ing new personnel) to motivate persons possessing those skills to reenlist or to extend their enlistments. The list of skills included by the Navy in the VRB program, and the multiples assigned to those skills, were posted and revised periodically, and Navy personnel were advised that "the list of eligible ratings is subject to change" (Pet. App. 97a).

At the times respondents agreed to extend their enlistments, completed the AEF training program, and were advanced to the CTM service rating, the CTM rating was included on the Navy's list of critically needed skills.[21] But on March 23, 1972, the Navy announced that effective July 1, 1972, the CTM rating would no longer be designated as a "critical military skill." The CTM rating was deleted from the Navy's VRB list on the latter date.[22]

When respondents, other than respondent Johnson,[23] began serving their two-year enlistment extensions in late 1972 and early 1973, they inquired about their eligibility to receive variable bonuses. The Navy advised them that while they would receive the regular reenlistment bonus provided by former 37 U.S.C.

[21] Navy BUPERS Instruction 1133.18B (December 19, 1968), which was in effect on the dates respondents agreed to extend their enlistments, is set forth at App. 92–109.

[22] Navy BUPERS Instruction 1133.18E (March 23, 1972) (Add., *infra*, p. 52).

[23] Respondent Johnson did not begin to serve his two-year enlistment extension until August 27, 1974 (App. 33), by which time authority to pay variable reenlistment bonuses had been eliminated and a new bonus system had been established by the Armed Forces Enlisted Personnel Bonus Revision Act of 1974, Pub. L. 93-277, 88 Stat. 119 (Pet. App. 85a–89a). See Add., pp. 41–42, *infra*.

308(a), they would not receive a variable bonus because the Navy no longer had a "critical" need for personnel with a CTM service rating and, as a consequence, the CTM rating had been removed from the Navy's VRB list prior to their having begun to serve their extension periods. The Navy also advised respondents that the extension agreements they had executed were binding and could not be abrogated because of their ineligibility for variable bonuses (see Pet. App. 7a–8a).

2. On March 30, 1973, respondents filed suit in the district court under the Tucker Act, 28 U.S.C. 1346 (a)(2), claiming that the Navy's refusal to pay them variable bonuses averaging $3,500 each constituted a breach of the extension agreements they had executed (App. 7–12). Respondents filed an amended complaint on August 20, 1973, supplementing their original request for a declaratory judgment with requests, *inter alia*, that the Navy be ordered to pay variable bonuses to them or to acquiesce in rescission of their extension agreements (App. 206–213). On cross-motions for summary judgment, the district court ruled in respondents' favor and ordered the Navy to pay the variable bonuses respondents had demanded (Pet. App. 65a–81a).[24]

[24] The district court also certified a class and granted respondents' counsel a portion of the class recovery as attorney's fees (Pet. App. 69a, 76a–79a). The court's judgment described the class as "those enlisted Navy personnel who had (or earned after entering a special training program) a critical military skill, who signed their first term reenlistment [*sic*] contract when that critical military skill was eligible for a Variable Reenlistment Bonus (VRB), but who were denied the VRB because their reenlistment period began to run after the suspension of the VRB [*sic*] on July 1, 1972 * * *" (Pet. App. 80a–81a).

In the view of the district court, respondents' entitlement to variable bonuses depended simply upon the application of ordinary principles of contract law (Pet. App. 73a–75a). According to the court, since the Navy had held respondents to the obligations specified in their reenlistment contracts, "mutuality of agreement" required that the Navy be bound similarly (*id.* at 74a). In determining the nature of the Navy's contractual obligations to respondents, the court invoked the "cardinal rule of contract law" that written instruments must be considered in light of their nature and purpose, and with due regard to the circumstances existing *"at the time of the contract"* (*ibid.*; emphasis in original).

The court then construed the phrase "in consideration of the pay, allowances, and benefits which will accrue to me during the continuances of my service," contained in the extension agreements, to mean that the Navy was obligated to pay respondents the variable bonuses applicable to the CTM rating as of the dates the agreements were signed (Pet. App. 74a–75a). The court added that this conclusion was supported by the "elemental" principle that "a contract must be construed most strongly against the authors which in this case was the government" (*id.* at 75a).

The government appealed the grant of summary judgment in respondents' favor, and respondents cross-

appealed from the district court's refusal to order the Navy to rescind their extension agreements.[35] While the appeals were pending, Congress enacted the Armed Forces Enlisted Personnel Bonus Revision Act of 1974, Pub. L. 93-277, 88 Stat. 119 (Pet. App. 85a-89a) (Bonus Revision Act), to become effective on June 1, 1974.

The Bonus Revision Act, most of which is now codified at 37 U.S.C. (Supp. V) 308 and 308a, eliminated both the regular and variable reenlistment bonuses provided under pre-existing law. In their places, Congress created a new bonus (commonly referred to as a "selective reenlistment bonus" (SRB)) under which the Services are authorized to pay in addition to basic compensation up to $15,000 to service personnel with critically-needed skills who agree to reenlist or extend their enlistments for a minimum of three years.[36] Although the Bonus Revision Act contained a savings clause protecting the eligibility of service personnel for a regular reenlistment bonus,[37] it did not contain a

[35] The government also challenged the district court's certification of the class, and respondents challenged those portions of the court's order setting attorney's fees and refusing to compel the Navy to disclose the names of putative class members (Pet. App. 9a).

[36] The Bonus Revision Act also created a second new bonus, in amounts up to $3,000, payable to any person "who enlists in an armed force for a period of at least four years in a skill designated as critical, or who extends his initial period of active duty in that armed force to a total of at least four years in a skill designated as critical * * *." 37 U.S.C. (Supp. V.) 308a (Pet. App. 88a).

[37] Section 3 of the Bonus Revision Act provides in pertinent part as follows (Pet. App. 88a-89a): "[A] member of a uniformed

savings clause protecting eligibility for variable reenlistment bonuses.

3. On February 17, 1976, the court of appeals affirmed the judgment of the district court in all respects (Pet. App. 1a-50a).[38] After acknowledging that "'[a] soldier's entitlement to pay is dependent upon statutory right'" (*id.* at 10a n.15, quoting from *Bell* v. *United States*, 366 U.S. 393, 401), the court analyzed the relevant statutory provisions and implementing regulations. The court noted that the statutory provisions creating the VRB program left to the Secretary of Defense the task of prescribing conditions of eligibility for receipt of such bonuses (Pet. App. 17a), and conceded that "[a]t first glance, the applicable military regulations would seem to support the Government's position" (*id.* at 18a). The court finally concluded, however, that under the applicable regulations, which it characterized as "rather complex" and "not free from ambiguity" (*id.* at 25a), respondents acquired on the dates they agreed to extend their enlistments a vested right to the payment of variable bonuses at the levels in effect at those times (*id.* at 22a). The court stated that this conclusion was

service on active duty on the effective date of this Act [June 1, 1974], who would have been eligible at the end of his current or subsequent enlistment, for the reenlistment bonus prescribed in section 308 (a) or (d) of that title, as it existed on the day before the effective date of this Act, shall continue to be eligible for the reenlistment bonus under that section as it existed on the day before the effective date of this Act."

[38] The court remanded the case to the district court solely for the purpose of determining an appropriate fee for the efforts of respondents' counsel on appeal (Pet. App. 50a).

both reasonable and consistent with congressional intent, and that it was "reinforced by [the court's] obligation to construe most strongly against the Government, as against any other drafter of a contract, ambiguous contract terms that are subject to a reasonable and practical interpretation other than that offered by the drafter" (*id.* at 25a).[29]

Since reenlistment bonuses are not actually paid until the service member begins to serve the period of his reenlistment or extension, and since respondent Johnnie S. Johnson had not completed serving the period of his original enlistment prior to the repeal by Congress of those statutory provisions authorizing the payment of variable reenlistment bonuses, the court dealt separately with Johnson's entitlement to such a bonus. Characterizing Johnson's right to a variable bonus as "contractual" (Pet. App. 30a), the court stated that "although Congress may constitutionally impair existing contract rights in the exercise of a paramount governmental power such as the 'War Powers [Clause]' * * *, Congress is 'without power to *reduce expenditures* by abrogating contractual obligations of the United States' " (*id.* at 29a, emphasis in original, quoting from *Lynch* v. *United States,* 292 U.S. 571, 580). The court then briefly reviewed the legislative history of the Bonus Revision Act and concluded that "Congress was primarily concerned [in

[29] The court affirmed the denial of respondents' request for rescission of their extension agreements on the ground that respondents had an adequate legal remedy and had not demonstrated exceptional circumstances warranting a grant of equitable relief (Pet. App. 32a–33a).

that Act] with reducing government expenditures by more narrowly tailoring the reenlistment bonus scheme to actual military requirements" (Pet. App. 29a). It therefore held that Johnson's "contractual entitlement to a VRB" had not been affected by Congress' repeal of the statutory provisions authorizing payment of variable reenlistment bonuses (*id.* at 30a).

Acknowledging that the Fourth Circuit previously had held in *Carini* v. *United States,* 528 F. 2d 738, petition for a writ of certiorari pending (No. 75-1695), that service personnel situated similarly to Johnson had not acquired a contractual entitlement to a variable reenlistment bonus, the court of appeals noted: "We obviously disagree" (Pet. App. 30a n. 35). In the statement issued by the court denying the government's petition for rehearing, the court agreed with the government that at least so far as regular pay for enlistees is concerned, enlistment documents "must be construed to incorporate not only the statutes in force at the time the agreement is signed but future changes in those statutes as well" (*id.* at 61a). But the court reiterated that under its interpretation of the extension agreements, the Navy had promised respondents and others similarly situated "a specific sum (in the form of a VRB) not dependent on future change" (*ibid.*).

SUMMARY OF ARGUMENT

The question presented by this case is whether respondents acquired, at the times they agreed to extend their enlistments in the United States Navy, a vested right to the payment of variable reenlistment bonuses.

The court of appeals, like the district court, believed that the resolution of that question depended in part upon the application of principles of construction drawn from the common law of contracts. But as this Court pointed out in *Bell* v. *United States, supra.*, 366 U.S. at 401, "common-law rules governing private contracts have no place in the area of military pay." There was no reason for the courts below to ignore that admonition in this case.

Indeed, not even the common-law contract principles erroneously relied upon by the court of appeals and the district court support the conclusion that the extension agreements executed by respondents created an entitlement to specific amounts of bonuses. Those agreements referred simply to the "pay, allowances, and benefits" that would accrue during the continuances of respondents' service. The agreements thus conformed to this Court's observation in *Bell* that "[a] soldier's entitlement to pay is dependent upon statutory right" (*ibid.*).

The Navy consistently administered the VRB program by determining entitlement to a variable bonus as of the date the service member actually began to serve the extended period of his enlistment. That administrative practice, which must be accorded " 'controlling weight unless it is plainly erroneous or inconsistent' " with the applicable statutes and regulations (*Immigration and Naturalization Service* v. *Stanisic*, 395 U.S. 62, 72, quoting from *Bowles* v. *Seminole Rock Co.*, 325 U.S. 410, 414), was consistent

with the governing statutes and regulations and with the intent of Congress in creating the VRB program. By contrast, the method of determining entitlement to a variable bonus urged by respondents, and accepted by the courts below, is inconsistent with the applicable statutes and regulations—and would have the unintended effect of depriving respondents of not only the variable bonuses they are seeking but also the regular reenlistment bonuses to which the Navy has determined they are entitled. Since none of the respondents was eligible to receive a variable bonus on the date he began to serve the extended periods of enlistment, the Navy properly refused to pay such bonuses to them.

ARGUMENT

AT THE TIMES THEY AGREED TO EXTEND THEIR ENLISTMENTS IN THE UNITED STATES NAVY, RESPONDENTS DID NOT ACQUIRE A VESTED RIGHT TO THE PAYMENT OF "VARIABLE REENLISTMENT BONUSES"

A. RESPONDENTS' EXTENSION AGREEMENTS ENTITLED THEM NOT TO A SPECIFIC SUM BUT ONLY TO THE PAY THAT WOULD ACCRUE UNDER APPLICABLE STATUTES AND REGULATIONS

The court of appeals held that respondents were contractually entitled, upon entering into their periods of extended service, to receive bonus payments in amounts equal to those in effect at the times they signed their extension agreements. According to the court, the sources of respondents' "contractual entitlement" were the agreements they had signed extending their enlistments "in consideration of the pay, allow-

ances, and benefits" accruing during the periods of extended service under the applicable statutes and military regulations (Pet. App. 24a–25a, 56a n.2, 61a; see also *id.* 73a–75a).

Although the court of appeals found that the applicable regulations were "not free from ambiguity" with regard to whether and when variable bonuses might accrue (*id.* at 25a), it determined that it was "reasonable" to read the extension agreements as binding the Navy to pay respondents "a specific sum" in the form of variable bonuses. The court of appeals believed this reading to be consistent with a perceived obligation "to construe most strongly against the Government, as against any other drafter of a contract, ambiguous contract terms that are subject to a reasonable and practical interpretation other than that offered by the drafter" (*id.* at 25a; see also *id.* at 75a). Indeed, the court stated that only an "express limitation on eligibility" could have preserved the Navy's right, or that of Congress, to change by regulation or statute the terms of the VRB program as it would apply to respondents when they later entered into their periods of extended service (*id.* at 25a).

We agree that the extension agreements executed by respondents and accepted by the Navy entailed a set of mutual obligations that might appropriately be characterized as "contractual" in nature. But the court erred in its opening premise that such a contract must be "construe[d] most strongly against the Government, as * * * [the] drafter of [the] con-

tract" (Pet. App. 25a). "[C]ommon-law rules governing private contracts have no place in the area of military pay." *Bell* v. *United States, supra,* 366 U.S. at 401.[30] Moreover, the common-law contract principles upon which the court purported to rely are rules of construction only, not prescriptive rules: they would not require "an express limitation on eligibility" for a future bonus when the terms of the contract, far from promising such a bonus, make no express mention of bonuses at all. It would be anomalous to require limitations on eligibility to be explicit when eligibility itself was at best implicit.

Not even the common-law rules of contract construction upon which the court of appeals erroneously relied would justify the court's conclusion that the extension agreements created an entitlement to specific amounts of bonuses: that conclusion is at war with the plain language of the agreements. The agreements do not contain any reference to the VRB program, or to the possibility of respondents receiving

[30] Because this case arises in a military context and involves military pay, the ordinary common-law rules of contract construction stated in *United States* v. *Seckinger*, 397 U.S. 203, 210, are inapplicable. See *Bell* v. *United States*, *supra*. The issue presented in *Seckinger* was the proper construction of a clause appearing in a fixed-price government construction contract. This Court long has recognized a distinction between contracts for the procurement, management, and disposal of government property and employment agreements or arrangements involving the federal government. *E.g.*, *United States* v. *Dickerson*, 310 U.S. 554, 555–556; *United States* v. *McDonald*, 128 U.S. 471, 473–474; *United States* v. *Fisher*, 109 U.S. 143, 145; *Embry* v. *United States*, 100 U.S. 680, 685. Cf. *United States* v. *Testan*, 424 U.S. 392, 406.

variable reinlistment bonuses.[31] Rather, as the Fourth Circuit pointed out in *Carini* v. *United States, supra,* 528 F. 2d at 741:

> [The agreements] were said to be in consideration of the "pay, benefits and allowances which will accrue." There is no reference to a VRB. Indeed, there is no specification at all of what pay will accrue. On its face, it seems to us to mean that the enlistee will receive the pay authorized by statute and regulation from time to time as he performs his service. Indeed, the plaintiffs concede that the monthly salary they receive was not fixed at the rates in effect at the

[31] Several of the respondents claimed in affidavits filed in the district court that, when they extended their enlistments, unidentified recruiting officers promised that they would receive a variable bonus at the expiration of their original enlistment (App. 15, 17–18, 21). But Commander Robert K. Sheehan, Head, Enlisted Program Variable Reenlistment Bonus and Pro-Pay Plans Section, Bureau of Naval Personnel, stated in his affidavit that "it is not the policy of the Department of the Navy to promise specific eligibility for Variable Reenlistment Bonus, nor is any official authorized to make such a promise in counselling with a prospective enlistee" (App. 204–205). In granting respondents' motion for summary judgment, the district court did not undertake to determine whether any of the respondents had been promised a variable bonus when they extended their enlistments. Neither did the court of appeals reach respondents' promissory estoppel argument (Pet. App. 10a).

In any event, even if unauthorized representations were made, the Navy cannot be estopped from refusing to pay variable bonuses to respondents if respondents were not eligible for such bonuses under the statute creating the VRB program or the applicable military regulations. See, *e.g.*, *Federal Crop Insurance Corp.* v. *Merrill*, 332 U.S. 380; *Parker* v. *United States*, 461 F. 2d 806, 809 (Ct. Cl.).

> time of the contracts. It is subject to the unfettered control of the Congress. * * *

Accord: *Collins* v. *Rumsfeld,* 542 F. 2d 1109, 1112 (C.A. 9), petition for a writ of certiorari pending *sub nom. Saylors* v. *United States* (No. 76–677). See *Deschler* v. *United States,* 203 Ct. Cl. 477.

Although the court of appeals concluded that the Navy had bound itself in the extension agreements to pay respondents "a specific sum" in the form of a variable reenlistment bonus, it conceded that the "regular pay for enlistees" referred to in enlistment documents is "an uncertain sum" subject to change during the period of the enlistee's military service (Pet. App. 61a).[32] The court attempted to rationalize this apparent paradox by explaining that the dependence of regular pay upon future change "does not mean that Congress is without authority to decide to promise a specific sum, rather than an uncertain sum, to achieve a given result, and this is precisely how the panel interpreted the extension agreement" (*ibid.*).

While we have no quarrel with the court's assessment of the scope of Congress' authority to fix the various forms of military pay, the extension agreements executed by respondents do not contain any provision that could fairly be construed as binding the

[32] Respondents undoubtedly would endorse the court's view that basic pay for enlistees is subject to change. The level of their basic pay has increased substantially during the periods of their military service, and they have never suggested that they were not entitled to those increases.

Navy to pay respondents "a specific sum" in the form of a variable reenlistment bonus. The reference in the agreements to the "pay, allowances, and benefits which will accrue to me during the continuances of my service" covered both regular pay and bonuses;[33] there is no basis for construing that provision as promising a specific sum in the form of a variable bonus and an uncertain sum in the form of regular pay. Indeed, if anything, the reference in the extension agreements to "pay * * * which will accrue" is more suggestive of future change than the phrase "under the conditions prescribed by law" appearing in respondents' original enlistment documents.[34] As the Ninth Circuit concluded in *Collins* v. *Rumsfeld, supra*, 542 F. 2d at 1112:

> The reenlistment agreements clearly contemplated the possibility of pay, allowances and benefits being altered during either the enlistment or reenlistment periods. The words "which will accrue to me during the continuances of my service" focus on the future and

[33] The term "pay" is defined at 37 U.S.C. 101(21) to include "basic pay, special pay, retainer pay, incentive pay, retired pay, and equivalent pay, but does not include allowances."

[34] The courts repeatedly have held that enlistment contracts incorporate not only the laws in effect at the time they are executed, but future changes in those laws as well. *E.g.*, *Johnson* v. *Powell*, 414 F. 2d 1060, 1065 (C.A. 5); *Schwartz* v. *Franklin*, 412 F. 2d 736, 738–739 (C.A. 9); *Goldstein* v. *Clifford*, 290 F. Supp. 275, 279 (D.N.J.) (three-judge court); *Morse* v. *Boswell*, 289 F. Supp. 812, 818 (D.Md.), affirmed per curiam, 401 F. 2d 544 (C.A. 4), certiorari denied, 393 U.S. 1052; *Winters* v. *United States*, 281 F. Supp. 289, 295–296 (E.D.N.Y.), affirmed per curiam, 390 F. 2d 879 (C.A. 2), certiorari denied, 393 U.S. 896.

> are inconsistent, at least in flavor, with the view that the agreements incorporated and made a part thereof the entire statutory and regulatory provisions pertaining to VRB's as they existed on the date such agreements were executed.[35]

In sum, the extension agreements executed by respondents did not commit the Navy to pay "a specific sum" in the form of variable reenlistment bonuses. The agreements simply bound the Navy to pay respondents "during the continuances of [their] service" in accordance with applicable statutes and regulations. The agreements thus conformed to this

[35] The court of appeals here suggested in the memorandum explaining its denial of rehearing that "the narrow issue" presented by this case is whether the "VRB * * * ripened [in]to a contract right under the circumstances presented in this record" (Pet. App. 56a). We disagree. The notion that a service member's expectation of receiving a variable bonus may ripen into a contract right, under certain circumstances, is premised upon the court's view of the extension agreements executed by respondents as promising a "specific sum" in the form of a variable bonus, payable when respondents entered upon the extensions of their enlistment. As we have demonstrated, the extension agreements did not contain any such promise. Consequently, the court's reliance upon *Fisk* v. *Jefferson Police Jury*, 116 U.S. 131, is misplaced. This Court stated in *Fisk* that, while the legislature may reduce prospectively the compensation paid to public officials, it may not reduce the compensation for services already performed (116 U.S. at 133–134). The court here assumed that the same rule would apply if the government "insists" upon receiving services bargained for "in exchange for a given sum of money" (Pet. App. 59a). Since respondents did not agree to extend their enlistments in exchange for fixed amounts of either regular pay or bonuses, the fact that the Navy has required them to serve their extensions of enlistment did not convert any expectation they may have had of receiving a variable bonus into a contract right.

Court's observation in *Bell* v. *United States, supra,* 366 U.S. at 401, that "[a] soldier's entitlement to pay is dependent upon statutory right." We turn, therefore, to an analysis of the applicable statutes and military regulations.

B. UNDER THE APPLICABLE STATUTES AND REGULATIONS, RESPONDENTS ARE NOT ENTITLED TO BE PAID VARIABLE REENLISTMENT BONUSES

1. Entitlement to a variable reenlistment bonus depended upon the terms of the VRB program in effect on the date the service member began to serve the extended period of his enlistment

In holding that respondents' entitlement to variable bonuses must be determined as of the dates they executed their extension agreements, the court of appeals expressly disclaimed any reliance upon the terms of the statute creating the VRB program (Pet. App. 10a n.15). The court correctly noted that "[a]ll parties to this case recognize that since the applicable statute [Pub. L. 89–132 (Pet. App. 85a)] provide[d] that payment of VRB awards is to be determined according to 'regulations prescribed by the Secretary of Defense,' the outcome under [respondents'] contract theory depends primarily on our interpretation of the applicable regulations" (Pet. App. 10a n.15). As we now show, those regulations deny to respondents the variable bonuses they seek.

In discussing the controlling regulations, we begin with the settled principle that "'[T]he ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation.'" *Immigration and Naturalization Service* v. *Stanisic, supra,* 395 U.S. at 72, quoting from *Bowles* v. *Seminole Rock Co., supra.* Accord: *e.g., Perkins* v. *Matthews,* 400 U.S. 379, 391; *Red Lion Broadcasting Co.* v. *Federal Communications Commission,* 395 U.S. 367, 381; *Udall* v. *Tallman,* 380 U.S. 1, 16–17. The Navy consistently administered the VRB program by determining entitlement as of the date the service member actually began to serve the extended period of his enlistment. As we shall show, that is consistent with the statute and regulations that governed the VRB program. Under that method, respondents—other than respondent Johnson (see pp. 41–42, *infra*)—were not entitled to variable bonuses because they did not possess a "critical military skill" on the dates their extension agreements became operative.

At the times respondents executed their extension agreements the Navy was authorized by Pub. L. 89–132, which was codified at 37 U.S.C. 308(g), to pay variable reenlistment bonuses to service personnel with a "critical military skill" who reenlisted for the first time and were eligible to receive a regular reenlistment bonus (Pet. App. 85a). Although the statute did not expressly authorize the payment of variable bonuses to service members who, like respondents, did not reenlist but rather agreed to extend their original enlistments, the VRB program covered such persons by virtue of 37 U.S.C. 906, which provides that members who extend their enlistments are "entitled to the same pay and allowances as though [they] had reenlisted" (Pet. App. 89a).

In the case of a person who reenlisted,[36] the Navy determined entitlement to a variable bonus as of the date the person began to serve the reenlistment period, which also was the date the reenlistment contract was signed. Navy BUPERS Instruction 1133.18B (December 19, 1968) prescribed the conditions of eligibility for persons desiring to reenlist, providing in pertinent part that "[e]ntitlement to a VRB vests only on the date the member reenlists (and is entitled to a first regular reenlistment bonus) and only if his rating or [Naval Enlisted Classification] is then currently on the effective list [of critically needed skills], and only at the multiple specified therein" (App. 96).

The regulations adopted to govern the award of variable bonuses to service members who agreed to extend their original enlistments provided that eligibility for such bonuses attached only when those members began to serve their extension periods. DOD Instruction 1304.15, para. VI.A., provided in pertinent part that "[m]embers * * * will receive the

[36] As provided by 32 C.F.R. 730.6(a)(3) (Add., *infra*, p. 49), service members who wished to increase the length of their service obligation by "reenlisting" could do so by obtaining an early discharge from their current enlistment and complying with the requirements of Navy BUPERS Manual, Article C–1403 (Add., *infra*, pp. 69–79). Under Article C–1403(4)(b)(5), members who reenlisted for the first time were required to do so for a minimum of two years (Add., *infra*, p. 74). A reenlistment went into effect the day after discharge from the member's preceding enlistment. Article C–1403(2)(a) and 3(a) (Add., *infra*, pp. 69–70).

Navy BUPERS Manual, Article C–1403, recently has been superseded by Article 1040300 (Add., *infra*, 80–94), which is not materially different.

award level effective on the date of their reenlistment or extension of enlistment, except as [otherwise] provided * * *" (Pet. App. 93a).[37] The date of extension of enlistment was the date the extension became operative, which was defined as "the date on which * * * service thereunder commence[d] * * * [*i.e.*], the date next following the normal date of expiration of enlistment." Navy BUPERS Manual, Article C–1407(1)(c) (Pet App. 97a–98a).[38] Moreover, the Department of Defense Pay and Entitlement Manual specified that "[a] member who extends his enlistment for two years or more is not paid the [regular reenlistment] bonus for the extension until he actually begins serving the extension" and "[t]he VRB * * * is payable at the same time the regular reenlistment bonus is paid" (Pet. App. 99a).

The extension agreements executed by respondents were consistent with these regulations and placed them on notice that their entitlement, if any, to a variable bonus depended upon the award levels in effect when they began to serve their extension periods. The bottom portion of the extension agreements, which bore the heading "Order to credit mileage allowance, *reenlistment bonus,* lump sum leave payment and other

[37] The "[otherwise] provided" clause referred to para. V.B. 1.f. of Instruction 1304.15 (Pet. App. 92a–93a), which provided that if the extension agreement was signed after notice had issued that the bonus was to be reduced as of a date certain, only the smaller bonus would be payable even if the extension pursuant to the agreement began to run before that date. See pp. 30–34, *infra*.

[38] Navy BUPERS Manual, Article C–1407, recently has been superseded by Article 1050150 (Add., *infra*. pp. 94–103), which is not materially different.

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allowances as provided by law and regulation" (emphasis added), was left blank when the agreements were executed (see, *e.g.*, App. 157). The sentences to be completed at some later time included the following: "The [original] enlistment described above, has been completed this date----------and tomorrow the extension thereof for -- years will become effective" (*ibid.*). Thus, for example, on March 13, 1969, when respondent White signed his extension agreement, the blank spaces in the sentence just quoted were not filled in (App. 25). But four years later, on March 12, 1973, when White's original enlistment expired, the sentence was completed as follows: "The enlistment described above has been completed this date 12 MARCH 1973 and tomorrow the extension thereof for 02 years will become effective" (App. 26).

In concluding that respondents acquired a vested right to variable bonuses when they executed their extension agreements, the court of appeals relied upon paragraph V.B. 1.f. of DOD Instruction 1304.15 [39] and

[39] The relevant portion of paragraph V.B. 1. of DOD Instruction 1304.15 stated that an enlisted member was eligible to receive a variable bonus if the member (Pet. App. 92a)— "f. Attains eligibility prior to the effective date of termination of awards in any military specialty designated for termination of the award. Member must attain eligibility prior to the effective date of a reduction of award level to be eligible for the higher award level. Eligibility attained through any modification of an existing service obligation, including any early discharge granted pursuant to 10 U.S.C. 1171, must have been attained prior to the date the authority approving the modification was notified of the prospective termination or reduction of award in the military specialty."

paragraph 7.h. of Navy BUPERS Instruction 1333.18E [40]—both or which dealt with the reduction and termination of variable bonus awards. Paragraph V.B. 1.f. of DOD Instruction 1304.15 modified the general rule, that members receive the award level effective on the date of their extension of enlistment, by providing, *inter alia,* that if the multiple assigned to a particular skill, for the purpose of computing the amount of the variable bonus award, were reduced, service members possessing that skill would receive the higher award only if "[e]ligibility" was "attained prior to the date the authority approving the [agreement to extend enlistment] was notified of the prospective termination or reduction of award in the [particular] military specialty" (App. 61). Paragraph 7.h. of Navy BUPERS Instruction 1133.18E essentially paraphrased this provision. According to the court of appeals, these regulations "obviously contemplate[d] a situation in which enlisted personnel *attain eligibility*

[40] Paragraph 7.h. of Navy BUPERS Instruction 1133.18E (March 23, 1972) stated that to receive a variable bonus a service member must, *inter alia* (App. 115–116)—"[a]ttain eligibility prior to the effective date of termination of the VRB award in a [service rating] designated for termination. Member must attain eligibility prior to the effective date of a reduction of award level to be eligible for the higher award level. Eligibility attained through an early discharge for the purpose of immediate reenlistment, or extension of enlistment, or other modification of an existing service obligation * * * shall be attained prior to the date the authority approving the modification is notified of the prospective termination or reduction of award in the [service rating]. This is the date a command receives the Bureau of Naval Personnel directive announcing termination or reduction of awards in the [service rating]."

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prior to the point at which they enter into periods of extended service" (Pet. App. 22a–23a); emphasis in original).

The court of appeals' interpretation of paragraph V.B. 1.f. of DOD Instruction of 1304.15 and paragraph 7.h. of Navy BUPERS Instruction 1133.18E was correct to a limited extent. "Eligibility" to receive a future award may be attained by agreeing to extend an enlistment, but mere eligibility does not ripen into entitlement until the effective date of the extension. The court of appeals confused eligibility with entitlement and erroneously concluded that a service member is entitled to the award level in effect on the date he attains eligibility.

The regulations address a situation in which a service member could both agree to extend his enlistment and begin serving the extension during the 90-day period between the receipt of notice of a prospective reduction or termination of the VRB award for a particular skill and the effective date of such change."[41] That situation is not rare or unusual.

Respondents agreed to extend their enlistments at the beginning of their periods of service in order to participate in the AEF training program, which was limited to personnel with a service obligation of at least six years (Add., *infra*, p. 53). But other specialized training programs offered by the Navy are not so limited. In fact, the Navy informs us that of the

[41] Paragraph IV.F. of DOD Directive 1304.14 (Pet. App. 90a) in pertinent part provides: "When a military skill is designated for reduction or termination of award an effective date for reduction or termination of awards shall be established and announced to the field at least 90 days in advance. * * *"

62 rating categories included on the VRB list in Navy BUPERS Instruction 1133.18E (App. 133), 44 could have been attained by persons serving only a four-year obligation. Personnel serving in any of the rating categories included in the VRB list, and having only a four-year service obligation, would have been in a position, if sufficiently near the end of their original obligation, both to agree to extend their enlistment and to begin serving the extension within the 90-day notice period.

One of the principal purposes of the notice provisions set forth at paragraph V.B. 1.f. of DOD Instruction 1304.15 and paragraph 7.h. of Navy BUPERS Instruction 1133.18E was to withhold from such service members any special incentive, in the form of a variable reenlistment bonus, for extending their enlistments at the last moment, after the Navy already had determined that their skills no longer were critical. Without such provisions, any members scheduled to complete an enlistment of less than six years[42] before the effective date of the VRB change could have agreed to and entered upon an extension of their enlistment, and claimed a variable bonus at

[42] Eligibility for a variable reenlistment bonus was limited by statute to persons who extended their original four-year enlistment for at least two years (Pet. App. 82a, 85a). But 37 U.S.C. 906 provides that "[f]or the purpose [] of determining entitlement to a reenlistment bonus * * * all * * * extensions of an enlistment are considered one continuous extension." Thus a service member who initially agreed to extend his enlistment for one year, and then later extended his enlistment for an additional one-year period, would otherwise have been entitled to a variable reenlistment bonus measured as of the date he entered into the first extension period, even though he woud have attained eligibility

the current award level, despite the Navy's determination that the particular skill they possessed was not as critical as it had been in the past.

Thus, the notice provisions of DOD Instruction 1304.15 and Navy BUPERS Instruction 1133.18E did not contemplate a situation in which enlisted personnel became entitled to a variable bonus prior to the point at which they entered into periods of extended service." Those provisions simply acknowledged, and were designed to deal with, the fact that some service members would have been able to extend their enlistments and enter into their period of extended service after the receipt of notice of the prospective termination or reduction of the VRB award level for persons with the skills they possessed but before such change had become generally effective.

If the regulations were read, as the court of appeals construed them, as determining entitlement to a variable bonus as of the date the extension agreement is executed, there would have been no conceivable set of circumstances under which respondents could have become eligible for either the variable bonuses they are seeking or the regular reenlistment bonuses to which the Navy has determined they are entitled.[43]

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for an award only later, when he signed the second extension agreement. By providing that eligibility must be attained before termination or reduction of an award level, the regulations foreclosed such a service member from receiving an award based upon an award level that was terminated or reduced prior to his agreement to extend his enlistment for a second year.

[43] The Navy entered into a stipulation in the district court agreeing to permit respondents to pick up their regular reenlistment bonus checks without prejudice to their claims in this litigation (App. 218).

One of the primary conditions for entitlement to the variable bonus specified in Pub. L. 89–132 was that the service member be "designated as having a critical military skill * * * upon his first reenlistment * * * *" (Pet. App. 85a). None of the respondents possessed a "critical military skill" on the dates they agreed to extend their enlistment; those dates were less than 30 days after they had enlisted (n. 4, *supra*). Indeed, the reason for the extensions specified on the "Agreement[s] to Extend Enlistment" executed by respondents was to enable them to secure a six-year service obligation so that they could qualify for entry into the Navy's AEF program (see, *e.g.*, App. 157).

Moreover, under the variable bonus statute, Pub. L. 89–132, a variable bonus was authorized to be paid only to service members entitled to receive a regular reenlistment bonus pursuant to Pub. L. 87–649 (Pet. App. 85a). The latter statute provided, *inter alia*, that "[a] member who reenlists * * * during his prescribed period of basic recruit training * * * is not entitled to a [regular reenlistment] bonus" (*id.* at 83a). The regular reenlistment bonus also was unavailable to service members who extended their enlistments during their prescribed period of basic training. 37 U.S.C. 906 (Pet. App. 89a). All of the respondents—with the exception of Lawrence E. White—executed their extension agreements during their prescribed period of basic training (see n. 4, *supra*). And although White executed his extension agreement after basic training, he entered the AEF program and signed a document acknowledging his six-year service commitment prior to having com-

pleted his basic training (*ibid.*). Thus, if the dates respondents executed their extension agreements are deemed to be the dates they "extended" their enlistments, none of the respondents—with the possible exception of Lawrence E. White—is entitled to even a regular reenlistment bonus, let alone a variable bonus.

In addition, under paragraph V.B. 1.b. of DOD Instruction 1304.15, service members who extended their enlistments were not entitled to a variable bonus unless they had "completed at least 21 months of continuous active service other than active duty for training immediately prior to * * * extension of enlistment" (App. 59). Accord: Navy BUPERS Instruction 1133.18B, para. 6.d (App. 97). Consequently, if respondents' entitlement is determined as of the dates they agreed to extend their enlistments, they would not have been eligible for a variable bonus because they would not have completed at least 21 months of continuous active service.

In short, only if respondents are deemed to have extended their enlistments as of the dates their extension agreements became operative and they began serving their extension periods could they have become eligible for a regular reenlistment bonus and satisfied the requirements of paragraph V.B. 1.b. of DOD Instruction 1304.15." That is the Navy's long-stand-

"By the time they had served their original enlistment, respondents had completed their basic training, qualified for a regular reenlistment bonus and completed at least 21 months of continuous active duty service, not including active duty service for training.

ing construction of its own regulations: a service member's extension of enlistment becomes operative on the date he begins to serve his extension period, and his entitlement to a variable reenlistment bonus is determined by reference to the VRB program in effect on that date. That administrative construction is not plainly inconsistent with the language of the regulations, and therefore is entitled to "controlling weight" (see pp. 26–27, *supra*).

It is undisputed that when they began to serve the extended periods of their enlistment, respondents did not possess a designated "critical military skill" under the VRB program then in effect (see pp. 11–22, *supra*). Accordingly, they were not entitled to variable reenlistment bonuses.

2. The regulations governing entitlement to variable reenlistment bonuses were consistent with the congresional intent

The fact that the applicable military regulations determined entitlement to a variable reenlistment bonus as of the date the service member began to serve the extension of his enlistment did introduce, as the court of appeals noted (Pet. App. 23a–26a), an element of uncertainty into the service member's decision to extend. It resulted in payment to some service members of larger variable bonuses than they had anticipated when they agreed to extend their enlistment, and in payment to other service members of smaller bonuses than they had anticipated. But those results were not, as the court suggested, "clearly at odds with

the explicit congressional objectives" (*id.* at 23a). In fact, they were no more than the inevitable consequences of the VRB program as designed by Congress.

As the legislative history cited by the court of appeals indicates (*id.* at 13a–17a), Congress designed the VRB program with reenlistments, rather than extensions of enlistment, in mind. Before Congress created the VRB program in 1965, the only monetary incentive for reenlistments was the regular reenlistment bonus—which was awarded at a flat rate, without regard to the needs of the armed services to retain personnel with particular skills. In urging the House and Senate Armed Services Committees to act favorably on the Administration's proposal to provide a more flexible monetary incentive for the reenlistment of personnel with critically needed skills, the Department of Defense noted that "losses of $10,000 or more occur whenever a first termer fails to reenlist and operational capability suffers because of severe shortages of careerists." H.R. Rep. No. 549, 89th Cong., 1st Sess. 47 (1965). See also S. Rep. No. 544, 89th Cong., 1st Sess. 18 (1965); 111 Cong. Rec. 17206 (1965) (remarks of Representatives Morton and Bennett); *id.* at 20034 (remarks of Senator Russell). Although the needs of the Services to attract and retain persons with particular skills might also have been met, at least in part, by creating a bonus program designed to induce personnel possessing those skills to extend their enlistments, or to induce other personnel to acquire skills in critical demand, those

possibilities were not considered during either the hearings or debates preceding enactment of the statute creating the VRB program.

Given the lack of attention to the impact of a variable bonus program on persons who might have been willing to extend their enlistments, it is not surprising that Pub. L. 89–132, the variable bonus statute, expressly authorized the payment of a variable bonus only to persons who agreed to reenlist in one of the military services. Indeed, if the text and legislative history of Pub. L. 89–132 had been considered in isolation, there would have been no basis for including in the VRB program personnel extending their original enlistment rather than reenlisting. But since service members who agree to extend their enlistments are entitled by statute "to the same pay and allowances as though [they] had reenlisted" (37 U.S.C. 906 (Pet. App. 89a)), the regulations implementing the VRB program made variable bonuses available to personnel agreeing to extend their enlistment on terms, to the extent possible, similar to those governing persons agreeing to reenlist.

The regulations thus provided that entitlement to a variable bonus, whether because of a reenlistment or extension of enlistment, would be determined as of the date the service member actually began to serve the period for which the bonus was being paid. As applied to both categories of obligated service, such determination of entitlement was consistent with the Defense

Department's representation to Congress that one of the principal advantages of a variable bonus program was that such a bonus "can be tailored to fit particular skill retention requirements and can be changed as those requirements change since there is no express or implied commitments about future payments." H.R. Rep. No. 549, 89th Cong., 1st Sess. 47–48 (1965). In the case of persons agreeing to extend their enlistments, determining entitlement to a variable bonus as of the date the extension period began also was dictated by the statutory provisions limiting eligibility for regular and variable reenlistment bonuses to personnel not extending their enlistment "during [their] prescribed period of basic recruit training * * *." Pub. L. 87–649 (Pet. App. 83a); Pub. L. 89–132 (Pet. App. 85a).

To be sure, the bonus system in effect at the times respondents extended their enlistments was flawed in a number of respects. Indeed, some of the more notable defects in that system prompted Congress to enact the Bonus Revision Act of 1974 (Pet. App. 85a–89a), establishing an entirely new bonus system. Moreover, had Congress focused on the status of persons who might have been willing to extend their service obligations at the time it enacted the statute creating the VRB program, and attempted to structure the program as it applied to such persons in the most efficient manner, the statute might have dealt differently with reenlistments and extensions of enlistment. But given the statute actually enacted, as construed by the officers * * * charged with its administration" (*Udall* v. *Tallman*, *supra*, 380 U.S. at 16), the applicable military regulations are reasonable and must be sustained.

C. RESPONDENT JOHNSON IS NOT ENTITLED TO A VARIABLE BONUS BECAUSE HE DID NOT BEGIN TO SERVE THE EXTENDED PERIOD OF HIS ENLISTMENT UNTIL AFTER CONGRESS HAD REPEALED THE STATUTE AUTHORIZING SUCH BONUSES

As we have previous noted (see p. 4 n. 4, *supra*), respondent Johnnie S. Johnson enlisted in the Navy for four years on August 28, 1970, and on the same date executed an agreement to extend his enlistment for an additional two years to permit him to enter the Navy's AEF training program. Johnson completed his original enlistment on August 27, 1974, and began serving the two-year extension of his enlistment the following day.

Prior to the expiration of Johnson's original enlistment obligation, Congress enacted the Bonus Revision Act of 1974 (Pet. App. 85a–89a). Although Section 3 of the Bonus Revision Act contained a savings clause protecting the eligibility of service personnel for a regular reenlistment bonus, the Act did not continue the authorization to pay variable reenlistment bonuses (Pet. App. 88a–89a). Since Johnson did not begin to serve the extended period of his enlistment until after June 1, 1974, the effective date of the Bonus Revision Act, the Navy refused to pay him a variable reenlistment bonus.

The major premise underlying the court of appeals' holding that Johnson nevertheless was entitled to a variable bonus was that he had acquired, at the time he agreed to extend his enlistment, a "contractual" right to a fixed amount in the form of a variable bonus (*e.g.*, Pet. App. 30a). The court proceeded from that premise to an examination of the legislative history of the Bonus Revision Act, concluding that Congress was not in that Act "exercising some paramount power enabling it to abrogate existing contract rights" and that, as a consequence, Johnson's "contractual entitlement to a VRB stands unimpaired after the 1974 amendments" (*ibid.;* footnote omitted).

For the reasons already discussed, when Johnson agreed to extend his enlistment he did not acquire a contractual right to a variable reenlistment bonus. The "Agreement to Extend Enlistment" executed by Johnson, like those executed by the other respondents, referred simply to the "pay, allowances, and benefits which will accrue to me during the continuances of my service" (App. 157). Since the Navy was not authorized to pay variable bonuses at the time Johnson began to serve the extension of his enlistment, that particular "benefit" simply did not "accrue" during the continuance of his service. Accordingly, the Navy properly refused to pay him such a bonus. *Collins* v. *Rumsfeld, supra; Carini* v. *United States, supra;* and see *United States* v. *Dickerson, supra,* 310 U.S. at 555.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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ADDENDUM

10 U.S.C. 509

(a) Under such regulations as the Secretary concerned may prescribe, the term of enlistment of a member of an armed force may be extended or reextended with his written consent for any period. However, the total of all such extensions of an enlistment may not exceed four years.

(b) When a member is discharge from an enlistment that has been extended under this section, he has the same rights, privileges, and benefits that he would have if discharged at the same time from an enlistment not so extended.

32 C.F.R. 730.4

(a) Unless voluntarily or involuntarily retained beyond normal expiration of term of service as provided in this section or in applicable directives promulgated by the Secretary of the Navy or the Chief of Naval Personnel, enlisted and inducted personnel of the Regular Navy and enlisted personnel of the Naval Reserve serving on active duty shall be separated as follows:

(1) *Expiration of enlistment.* Discharge upon normal date of expiration of enlistment, extension of enlistment, or period of induction, provided that the individual does not have an additional service obligation as set forth in article C–1402 of the Bureau of Naval Personnel Manual. See paragraph (b) of this section for action to be taken if the individual has such an additional service obligation.

(2) *Fulfillment of service obligation.* Discharge upon fullfillment of service obligation acquired under the provisions of section 4(d) of the Universal Military Training and Service Act as amended (50 U.S.C. App. 454(d) 10 U.S.C. 651), provided no portion of the contractual enlistment or extension thereof remains to be served. Article C–10320 of the Bureau of Naval Personnel Manual contains information as to the requirements for fulfillment of service obligation.

(3) *Expiration of tour of active service.* Release to inactive duty upon completion of period of active obligated service or period of such service as voluntarily or involuntarily extended. (Applicable to Naval Reservists who have time remaining in their enlistment contract and/or who have an additional service obligation as set forth in article C–1402 of the Bureau of Naval Personnel Manual).

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(b) Regular Navy personnel, including inductees, having an additional service obligation remaining upon completion of their enlistment, extension of enlistment, or period of induction shall, if otherwise eligible therefore, be transferred to the Naval Reserve and released to inactive duty in accordance with the provisions of article C–10319 of the Bureau of Naval Personnel Manual. Exceptions to the foregoing are those cases in which the individual desires, and is accepted for, immediate reenlistment in the Regular Navy in which event discharge will be effected in accordance with applicable instructions. See also article C–1407 of the Bureau of Naval Personnel Manual and implementing directives regarding extensions of enlistment. Such discharge and reenlistment or extension of enlistment do not relieve the individual of his service obligation. Time served in the reenlistment or extension of enlistment will be counted toward fulfillment of the service obligation. Members of the Naval Reserve having an additional service obligation remaining upon completion of enlistment or extension of enlistment shall, if eligible therefor, be retained in the Naval Reserve to complete the service obligation.

(c) Conditions allowing early separation within 3 months of normal expiration of term of service are set forth in article C–10317 of the Bureau of Naval Personnel Manual.

(d) The normal date of expiration of a two, three, four, or six-year enlistment is respectively, the day preceding the second, third, fourth, or sixth anniversary of the date of enlistment, as adjusted for the purpose of making up any time lost from the enlistment. (10 U.S.C. 972; see § 730.4a.) The normal date of expiration of a minority enlistment is the day preceding the individual's twenty-first birthday as adjusted for the purpose of making up any time lost from the enlistment.

(e) Retention beyond normal expiration of enlistment or term of service: Under certain conditions personnel may legally be retained beyond date of expiration of enlistment or other period of obligated service, either voluntarily or involuntarily, until discharge, release to inactive duty, or transfer to the Naval Reserve and release to inactive duty is accomplished. Whenever a person is retained in service beyond expiration of enlistment, or other period of obligated service, entry as to the reason and authority for the retention shall be made on appropriate page of the person's service record and signed in accordance with article B–2305 of the Bureau of Naval Personnel Manuel. Enlisted personnel may be held beyond expiration of their enlistment or other period of obligated services for any of the following reasons as applicable:

(1) *Voluntary extension of enlistment.* Enlisted personnel may execute a voluntary agreement to extend enlistment in accordance with the provisions of article C–1407 of the Bureau of Naval Personnel Manual and implementing instructions.

(2) *Ship outside continental limits.* The normal date of expiration of enlistment or extension of enlistment of a person serving aboard a ship in foreign waters may be extended until return of the ship to a continental port of the United States, or until transfer of the person concerned to the separation activity nearest the port of debarkation. Retention for return to the United States may be effected upon voluntary request of the individual concerned or it may be effected by the senior officer present afloat if, in his opinion, the retention is essential to the public

interests. Persons so retained shall be separated not later than 30 days after arrival in the United States. In order to be entitled to the increase of 25 percent in basic pay for the period of retention (10 U.S.C. 5540), the member must have been retained after the expiration of enlistment or extension of enlistment because his services were considered essential to the public interests as differentiated from desirability of the continuance of his services or some measure of benefit to be derived therefrom. (Specifically excluded from this provision are enlisted persons who are retained beyond the terms of their enlistments at shore stations, on ships on duty in waters in or around possessions and territories of the United States, or on ships on duty in ports or waters within the sovereign jurisdiction of the United States. Also excluded are members of the Naval Reserve who are retained on active duty beyond the expiration of their periods of obligated active service as distinguished from the normal * * *

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32 C.F.R. 730.6

(a) The Chief of Naval Personnel may authorize or direct the separation of enlisted or inducted personnel prior to the expiration of their active obligated service dates for any one of the reasons listed in this section. The term "separation" as used in this section includes discharge or transfer to the Naval Reserve and concurrent release to inactive duty, or release to inactive duty in certain cases of Naval Reservists serving on active duty who have time remaining in service obligation or enlistment contract.

(1) General demobilization, reduction in authorized strength, or by an order applicable to all members of a class of personnel specified in the order.

(2) Acceptance of a commission or permanent appointment as officer in any branch of the Armed Forces, for active duty only (includes appointment as warrant officer in U.S. Army Reserve (Active)). Members who initiate application for selection as an officer in any other branch of the Armed Services should be advised to submit, by separate action, request for conditional release to accept such appointment. Requests are to be submitted to the Chief of Naval Personnel via member's commanding officer with a copy to the appropriate Enlisted Personnel Distribution Office.

(3) To permit immediate reenlistment at the request of the individual prior to normal expiration of enlistment in accordance with article C–1403 of the Bureau of Naval Personnel Manual or other instructions issued from time to time by the Chief of Naval Personnel.

(4) National health, safety or interest.

(5) Erroneous enlistment, reenlistment, extension or induction.

(6) Conscientious objection (article C–5210, Bureau of Naval Personnel Manual).

(7) Disqualified—obesity (article C–7703, Bureau of Naval Personnel Manual).

(8) To accept a public office.

(9) To provide for early separation of personnel under various authorized programs and circumstances.

(10) Repeated below-average or unsatisfactory markings or unfavorable or less than favorable re-

marks on noncommissioned or petty officer fitness or enlisted performance evaluation reports.[1]

(11) Substandard personal behavior which reflects discredit upon the service or adversely affects the member's performance of duty.[1]

(12) Upon an individual member's written request submitted in accordance with § 730.8, where there is a demonstrated dependency or hardship, even though such dependency or hardship does not meet the criteria specified in that section.[1]

(13) Upon the recommendation of the Chief, Bureau of Medicine and Surgery, that a member of the naval service be separated for administrative reasons when such member is suffering from a condition not considered a physical disability and such condition has interfered with his performance of duty.

(14) When, as determined by a medical officer or his commanding officer, a member is allergic to clothing material or cannot be fitted with appropriate uniform clothing or provided with appropriate bedding.

(15) As a result of action taken with respect to the decisions or recommendations of the Naval Clemency Board, a Navy Review Board, or a Navy Enlisted Performance Board or other similar board.

(16) When, as determined by a medical officer, the member suffers from motion/travel sickness (989—as listed in Department of Defense Disease and Injury Codes, TB BED 15, NAVMED P–5082, AFM 160–24).

(17) Upon determination by a medical officer that a member of the naval service, as a member of any of the various Navy officer candidate, officer training,

[1] Requests/recommendations for separation under subpar. (10), (11), or (12) are not desired. The Chief of Naval Personnel will initiate such action when appropriate.

or officer procurement programs, is not physically qualified for appointment as an officer in the naval service, although the member's physical disqualification does not fall within the purview of § 730.5, and although the member is physically qualified to serve as an enlisted member of the naval service.

(18) Where a member is properly inducted, enlisted or reenlisted, but is erroneously given a higher grade than that to which he is entitled under applicable Navy directives.

Fiscal Year 1973 VRB Program

A study of the current manning levels has produced the following changes in the VRB Program for fiscal year 1973

The following ratings will be added to the VRB eligibility list effective 1 July 1972

Aviation Boatswain's Mate (launching and recovery equipment) (ABE)	—Multiple 3
Mineman (MN)	—Multiple 3
Musician (MU)	—Multiple 2

The following ratings have been deleted from the VRB eligible list effective 1 July 1972. Effective immediately, if you are in one of the deleted ratings, you may not reenlist early (including within 90 days of EAOS) to establish VRB eligibility

Communications Technician ("M" Branch) (CTM)
Disbursing Clerk (DK)

Check with your Career Counselor for the details, if he doesn't have the answers, he knows where to get them.

BUPERSINST 1133.18E of 23 March 1972

Display on Bulletin Board and Publish as Appropriate, Then Destroy Inclusion in Plan of the Day Notes Is Recommended

Pers–B2131–gn–56
31 AUG. 1966

From: Chief of Naval Personnel.
To: Commander, U.S. Naval Training Center, San Diego, California 92133.
Commander, U.S. Naval Training Center, Great Lakes, Illinois 60088.
Subj: Advanced Electronics Field (AEF) Program; information concerning.
Ref: (a) U.S. Navy Recruiting Manual, Part C–22.
(b) BUMED Manual.
(c) Navy Security Manual for Classified Information (OPNAVINST 1510.1 series).
(d) BUPERSINST 1430.14 series (Subj: Automatic Advancement to E–4 for certain Class "A" School Graduates).
Encl: (1) Training path available through the Advanced Electronics Field (AEF) Program.

1. The purpose of this letter is to set forth the special administrative actions required of addressees and information addressees for training and detailing of personnel recruited and classified into the Advanced Electronics Field (AEF) Program.

2. The design, operation and maintenance of increasingly complex electronics equipment requires a higher level of competence. Therefore, all personnel assigned to the electronics' ratings require extensive training in electronics theory, maintenance and operation. To accomplish this, the Advanced Electronics Field (AEF) Program outlined in reference (a) has

been established as a Six Year Obligor Program. This program will provide unique and nearly unlimited opportunities in the modern technical Field of electronics for personnel recruited and enlisted in this program.

3. It is pointed out that this program and the Nuclear Field Program are two distinct programs. In this regard the NF Program retains its high priority. Initial recruiting of personnel into the AEF Program or subsequent reassignment of personnel from this program who volunteer for the NF Program will depend upon BUPERS established quotas and priorities.

4. Advanced Electronics Field (AEF) Personnel must meet the following requirements and criteria:

a. Prior to graduation from Recruit Training, must be determined to be physically qualified for the Advanced Electronics Field (AEF) Program. In accordance with reference (b), personnel selected for a class "A" school which leads to duty in a submarine will also require a submarine physical.

b. Be a U.S. citizen and meet security clearance requirements. Requests for security clearance will be prepared and handled in accordance with reference (c).

c. *Mental.* Applicants for enlistment under the provisions of this program must attain one of the following:

(1) A score GCT+ARI+MECR of 160 or above on the SBTB.

(2) A score of 65 or above in the Electronics aptitude area of the Airman Qualifying Examination. AFQT scores will not be used for this program.

d. Be a high school graduate or have completed two

years of high school and have a high school GED equivalent.

e. Agree to extend enlistment, if necessary, in order to have a minimum of six years obilgated service from the date of enlistment.

f. It is pointed out that markedly inferior performance in training phases subsequent to Course A–1 will be cause for drop from the Advanced Electronics Field (AEF) Program.

5. When an extension of enlistment is necessary in order for Advanced Electronics Field (AEF) Personnel to have the required minimum of six years obligated service, extensions will be executed prior to selection for Class "A" School during Recruit Training. However, personnel who were enlisted on minority enlistments cannot extend their enlistments until they have reached their eighteenth birthday.

a. When an Agreement to Extend Enlistment (service record page 1A) is executed for the purpose of obtaining required obligated service for the Advanced Electronics Field (AEF) Programs, the following entry shall be made on that page in the individual's service record as REASON FOR EXTENSION:

> "Training (Advanced Electronics Field (AEF) Program—BUPRS ltr Pers–B2131–gn–56 of July 1966). I understand that this extension agreement becomes binding upon successful completion of basic training (Phase I) and upon enrollment in the advanced training (Phase II) and thereafter may not be canceled except as set forth in BUPERS Manual, Article C–1407."

b. Personnel who enlisted for minority enlistments but who will not have reached their eighteenth birthday prior to graduation from Recruit Training or prior to graduation from Course A–1 of Class "A"

Schools *cannot* extend their enlistments. Therefore, they shall be apprised of this fact and be required to sign the following entry on the Administrative Remarks Page, Page 13, of their service records:

> "Date: I hereby agree to extend my enlistment on (Date) for a period of ____ full years and ____ months in order to have sufficient obligated service to participate in the Advanced Electronics Field (AEF) Program.

WITNESSED: _____ (Signature)

_____ (Pers Officer)

c. Requests for cancellation of extensions will be considered only when an individual enrolled in the Program is not enrolled in advanced training.

NOTE.—Extensions executed for the Advanced Electronics Field (AEF) Program which are made to run concurrently with the obligated service requirements for Automatic Advancement, in accordance with reference (d), may not be canceled even though the obligated service requirements for the Advanced Electronics Field (AEF) Program are removed.

6. Personnel recuited for this Program who do not meet the eligibility requirements for the Advanced Electronics Field (AEF) Program will be assigned to a Class "A" School outside the Electronics Field for which otherwise qualified.

7. All advanced Electronics Field (AEF) Personnel will be included in the weekly recruit school recommendation report submitted to the Chief of Naval Personnel (Pers-B2131). Other eligible recruits should be counselled to volunteer for the Advanced Electronics Field (AEF) Program. Those who do volunteer should not be assigned into the program until all

requirements have been met. In addition, personnel may be solicited from those enrolled at individual Class "A" Schools.

8. The Advanced Electronics Field (AEF) Program outlined in enclosure (1) has been developed to delineate the training phases for the source ratings listed above.

9. This program will be implemented in October 1966, at which time the Electronics Field Program will phase out. However, Electronical Personnel who have been recruited in the Electronics Field Program under the CACHE Program will be encouraged to enlist under the provisions of the Advanced Electronics Filed (AEF) Program prior to October 1966.

Copy to:
CO, RTC SDIEGO
CO, RTC GLAKES
CO, ADCOM SDIEGO
CO, ADCOM GLAKES
CO, SERVSCOLCOMD SDIEGO
CO, SERVSCOLCOMD GLAKES

Pers–B213–lay–64
12 JAN 1967

From: Chief of Naval Personnel.

To: Commander, U.S. Naval Training Center, San Diego, California 92133.
Commander, U.S. Naval Training Center, Great Lakes, Illinois 60088.

Subj: Advanced Electronics Field (AEF) Program; information concerning

Ref: (a) Chief of Naval Personnel letter Pers–B2131–gn–56 dated 31 August 1966

1. Delete the REASON FOR EXTENSION contained in paragraph 5.a. of reference (a) and substitute the following:

"Training (Advanced Electronic Field (AEF) Program—BUPERS ltr Pers–B2131–gn–56 of 31 Aug 1966). I understand this extension agreement becomes binding upon execution and thereafter may not be cancelled except as set forth in BUPERS Manual, Article C–1407."

(By direction) J. E. LACY.

BUPERSINST 1430.14C
Pers–B2231–sfs
30 August 1968

DEPARTMENT OF THE NAVY
BUREAU OF NAVAL PERSONNEL
WASHINGTON, D.C. 20370

BUPERS INSTRUCTION 1430.14C

From: Chief of Naval Personnel.

To: All Ships and Stations (less Marine Corps field addressees not having Navy personnel attached).

Subj: Automatic advancement for certain Class "A" and Service School Graduates.

Ref: (a) Manual of Advancement in Rate or Rating, NAVPERS 15989,
(b) Instructions for the Naval Manpower Information Systems, NAVPERS 15642,
(c) Manual of Qualifications for Advancement in Rating, NAVPERS 18068B,
(d) BUPERS Manual.

Encl: (1) School and Percentile Criteria for Automatic Advancement.
(2) Brief sheet (detach; and post on bulletin board or promulgate as appropriate).

1. PURPOSE. To promulgate the procedures whereby graduates of certain Class "A" and Service Schools may be advanced without competing in a Navy-wide advancement examination.

2. CANCELLATION. This Instruction cancels and supersedes BUPERS Instruction 1430.14B.

3. BACKGROUND. The need for high quality, school-trained personnel, particularly in the technical areas, cannot be met by reliance on inputs of four obligors. The short period of usefulness of these personnel results in rapid turnover and generates large and expensive training requirements. Therefore, the incentive of automatic advancement as outlined in this Instuction is offered in the interest of increasing the length of obligated service of selected graduates of certain Class "A" and Service Schools. It should be noted that personnel who take advantage of this automatic advancement may also be eligible for the full benefits of the STAR Program.

4. ELIGIBILITY. Eligibility requirements are as follows:

a. Graduates from Class "A" or Service Schools listed in enclosure (1), less basic EOD/UDT/SEAL Schools, are eligible for automatic advancement to pay grade E–4 in the rating for which in training provided they:

(1) Have a minimum total obligated active service in the current enlistment which, when completed, will total 6 or more years of active service in the Navy; i.e., enlistment, enlistment as extended, or active duty agreement in the case of Reserve personnel, must

total a minimum of 6 years. In addition, the obligated service must be sufficient to permit the member to complete a minimum of 2 years active duty subsequent to completion of the Class "A" or Service School. In cases where the obligated active service requirements of this Instruction differ with the requirements of other directives, the maximum requirement shall apply.

(2) Have graduated from a Class "A" or Service School with a final grade equal to or higher than that grade representing the percentile listed in enclosure (1) for the school concerned. The percentile is computed quarterly based on the performance of *U.S. Navy* students of the applicable school for the previous four quarters. *The performance of non-U.S. Navy students will not be considered in the percentile computation.*

NOTE.—The term "U.S. Navy" in this instance includes active duty U.S. Naval Reserve personnel.

(3) Have completed all eligibility requirements for advancement necessary to participate in the Navy-wide advancement examination as contained in reference (a). Waivers of service in pay grade currently authorized and promulgated by BUPERS Notice 1418 for each Navy-wide examination for advancement under the provisions of reference (a) are applicable to advancements effected in accordance with this Instruction.

b. Graduates from the basic EOD/UDT/SEAL Schools listed in enclosure (1) are eligible for a one-step automatic advancement to pay grade E–4 or E–5, as applicable, in their present rating if assigned a striker identification or serving in pay grade E–4, or to any rating for which eligible if serving in pay grade E–3 and not assigned a striker identification,

BEST COPY AVAILABLE

without regard to percentile computation provided they:

(1) Have the minimum total obligated active service required in sub-paragraph 4a(1) above.

(2) Have completed all eligibility requirements for advancement necessary to participate in the Navy-wide advancement examination as contained in reference (a). Waivers of service in pay grade currently authorized and promulgated by BUPERS Notice 1418 for each Navy-wide examination for advancement under the provisions of reference (a) are applicable to advancements effected in accordance with this Instruction.

c. The authority to effect automatic advancement terminates one year from the date of graduation from Class "A" or Service School.

d. In the case of Class "A" Schools which require a 6-year obligation in order to be assigned to an advanced phase of the school, such as the FT, ET, and ST "A" Schools, only those personnel eligible for the advanced phase are eligible for the automatic advancement. Percentile computation shall be based on the performance of all U.S. Navy students in the basic phase (i.e., course A1). Provided eligible in all other respects in accordance with this Instruction, such personnel may be advanced subsequent to satisfactory completion of the A1 course. Personnel who fail to achieve percentile computation grade necessary to establish eligibility at the completion of the A1 course, but who are selected for entry into the advanced phase of a 6-year obligor training program, will be given an additional opportunity to qualify. If, upon completion

of the entire Class "A" School, their cumulative Class "A" School grade average (including course A1) exceeds or equals the criterion grade established at the time of completion of the A1 course, these personnel will be considered eligible for automatic advancement. Other qualifying requirements remain in effect.

5. OBLIGATED SERVICE AGREEMENTS. a. REGULAR NAVY (USN) PERSONNEL—

(1) Personnel whose present enlistment or enlistment as extended does not meet the total requirements of sub-paragraph 4a(1) above will be required to execute a page 1A agreement to acquire the obligated service required by this Instruction. In the event the member has previously executed an extension which does not provide the necessary *total* obligated service and that extension has not become operative, cancel that extension and execute a new extension for the total requirement of this Instruction. Cite this Instruction as authority for such cencellation. In all such cases, the following entry will be made on the page 1A as REASON FOR EXTENSION:

"Advancement to pay grade (*E–4 or E–5 as applicable*) in accordance with BUPERS Instruction 1430.14 series. I understand that upon such advancement, this extension becomes binding and thereafter may not be canceled except as set forth in BUPERS Manual, article C–1407."

(2) In the event the member has voluntarily executed an agreement to extend his enlistment for other reasons and that extension satisfies the total obligated service requirements of this Instruction, make the following page 13 entry:

229-779—77——5

"I understand and agree that upon my being advanced to pay grade (*E–4 or E–5 as applicable*) in accordance with BUPERS Instruction 1430.14 series, that page 1A dated ————, which was executed for the purpose of ————————, will become binding and will serve to fulfill the obligated service requirements for automatic advancement. I understand that any future cancellation of obligated service requirement for the purpose of ———————— will not serve as reason for cancellation of page 1A dated ————, except as set forth in BUPERS Manual, article C–1407."

The above page 13 entry must be signed by the member being advanced and witnessed by an officer.

b. *Naval Reserve (USNR) Personnel.* Execute an active duty agreement for the period of active obligated service required by this Instruction. Required extensions of enlistment will be in accordance with 5a above.

6. ACTION. To insure proper control, correct accounting, and to guard against improper advancements, administrative commanders will take the following indicated action:

a. *Commanding Officers.* Insure that all eligibility requirements of paragraph 4 above have been met prior to effecting advancements. Make the following page 13 entry in the service record of each person advanced in accordance with this Instruction:

"Advanced to (Rate) effective this date. AUTHORITY: BUPERSINST 1430.14C."

When an advancement is effected by the commanding officer, a personnel diary entry shall be submitted by

normal means in accordance with reference (b), citing this Instruction as authority.

b. *Class "A" or Service School.* In the event personnel meet all requirements for automatic advancement upon graduation except the required obligated service or time in pay grade, the appropriate school command shall make the following page 13 entry in the service record of each candidate:

"Date. When eligible in all respects, (Name) may be advanced to (Rate). AUTHORITY: BUPERSINST 1430.14C. This authorization terminates (Date).

The duplicate page 13 containing such entries shall be forward immediately under separate cover to BUPERS (Pers–N3124)"

NOTE.—Termination of advancement authorization is 1 year from date of graduation.

7. EFFECTIVE DATE. This Instruction is effective 1 September 1968 for personnel graduating on or subsequent to that date. Retroactive advancements are not authorized and requests for waivers will not be approved. Personnel qualifying for automatic advancement under previous editions of this Instruction may be advanced when fully qualified citing the appropriate edition of BUPERS Instruction 1430.14 series as authority.

M. F. WEISNER,
Deputy Chief of Naval Personnel.

Stocked: Supply and Fiscal Department (Code 514.32). U.S. Naval Station, Washington, D.C.

School and Percentile Criteria for Automatic Advancement

School:	Percentile*	School:	Percentile*
AB*	10	CT	"
AC	"	CYN	"
ADJ*	"	DC	"
AE	"	DK*	"
AG	"	DP	"
AK*	"	DS	"
AM*	"	DT*	"
AO*	"	EA*	"
AQ	"	EM	"
AS*	"	EN	"
AT	"	EO*	"
AW*	"	ET	"
AX	"	FT	10
AZ*	"	GM	"
BT	"	GMT#	"
BU*	"	IC*	"
CE*	"	IM*	"
CM*	"	JO*#	"
CS*	"	MM	"
MR*	"	ST#	"
MT	"	SW*	"
MU*	"	TD	"
OM*	"	TM#	"
PH*	"	UT*	"
PM*	"	YN	"
PN*	"	POLARIS/ POSEIDON*	"
PR*	"	QM*#	"
PT#	"	SM*#	"
RD	"	EOD/UDT/ SEAL*%	NONE
RM	"		
SF*	"		
SK*	"		

*—Denotes Change.

#—Satisfactory completion of any Fleet or Special School listed in enclosure (1) of BUPERSINST 1440.3F is considered equivalent of graduation from "A" School.

%—Satisfactory completion of any of the courses listed below is equivalent to graduation from "A" School. Only these courses are eligible for automatic advancement under the provisions of this Instruction: UDT Replacement Training Course, NAVPHIBSCOL, Little Creek, Virginia Basic UD/SEAL Training Course, NAVPHIBSCOL, Coronado, California Navy Explosive Ordnance Disposal/Nuclear Weapons Course (Basic) Naval School, Explosive Ordnance Disposal, Indian Head, Maryland.

Information of Special Interest to Naval Personnel

Bupersinst 1430.14C
of 30 August 1968

Subj: Automatic Advancement for Certain Class "A" and Service School graduates

The Automatic Advancement Program was implemented in 1963 as an incentive for increasing the length of obligated service of certain Class "A" and Service School graduates to meet the need for high quality, school trained personnel, particularly in the technical areas. Personnel eligible for automatic advancement under this Program are not required to compete in the Navy-wide advancement examination. Effective 1 September 1968 additional Class "A" and Service Schools will be added to the list of schools from which graduates are eligible for automatic advancement. Class "A" School additions are: AB, ADJ, AK, AM, AO, AS, AW, AZ, BU, CE, CM, CS, DK, DT, EA, EO, IC, IM, JO, MR, MU, OM, PH, PM, PN, PR, SF, SK, SW, UT. Service School additions are: QM, SM, EOD, and Basic UDT/SEAL Training.

The Automatic Advancement Program has also been expanded to include provisions for a *one-step* automatic advancement to either pay grade E–4 or E–5, as applicable, for graduates from the basic EOD/UDT/SEAL training.

To be eligible for advancement under the Automatic Advancement Program personnel must:

(a) Complete the appropriate course of instruction with a grade equal to or higher than that grade representing the percentile established for the course of instruction.

(b) Have a minimum total obligated service in the current enlistment which, when completed, will total six or more years of active service in the Navy.

(c) Must have completed *all* eligibility requirements for advancement under normal advancement procedures required by paragraph 302.1, Manual of Advancement in Rate or Rating, NAVPERS 15989 including successful completion of the applicable military/leadership examination. (Waivers of service in pay grade currently authorized for the Navy-wide examinations are also applicable to automatic advancements effected after 1 September 1968.)

Recommended Date for Disposal or Removal From Bulletin Boards 1 October 1968

It is recommended that this sheet be displayed on the bulletin board printed in the daily bulletin plan of the day or weekly newspaper or copied and distributed to officers and men affected

(NOTE.—C–1403 and C–1407 being held in abeyance by BPI 1133.16 for Steward Rating Group for those who on current EAOS would approach, complete or exceed 20 (19 and 6) years of active service.)

C–1403. REENLISTMENT WITH CONTINUOUS SERVICE

(1) Following are the general provisions governing reenlistments in the Regular Navy under continuous service conditions. BuPers Instruction Series 1133 should be consulted for special information relating to terms and conditions affecting reenlistments. Also, article C–7821 should be consulted for performance criteria.

(2) *Definitions.*

(a) "Continuous Service" as used herein is defined as service in the Regular Navy which is continued by reenlistment within 3 months following discharge. The phrase as used in this article and in article C–1404 will be interpreted to mean that a person who is reenlisted on the same date of the month three calendar months from date of discharge is reenlisted "within 3 months". For example, a person discharged on 7 December may be reenlisted on any day up to and including 7 March and retain continuous service.

(b) "Reenlistment"—If member has previously served an enlistment in the Regular Navy (not including service as an inductee), his enlistment therein will be a reenlistment.

(3) ***Eligibility for Reenlistment in the Regular Navy.***

(a) To be eligible for reenlistment in the Regular Navy, under this article, an individual must be eligible for or have been discharged from his most recent Regular Navy service by reason of expiration of enlistment or convenience of the Government, meet the eligibility standards prescribed in article C–7821(17), and have been recommended by his commanding officer for reenlistment. (See article C–10103(2).) Personnel who do not meet all the aforementioned requirements may not be reenlisted without the consent of the Chief of Naval Personnel. Personnel who are in receipt of authorization for transfer to the Fleet Reserve may not reenlist without specific authority of the Chief of Naval Personnel. Reenlistment subsequent to transfer to the Fleet Reserve is not authorized. Regular Navy personnel who meet all the eligibility requirements may, if physically qualified therefor, be discharged and reenlisted at the following times:

1. *Expiration of Enlistment.*

a. On normal expiration of enlistment or normal expiration of enlistment as extended. Article C–10304 will be shown as authority for discharge.

b. Three months or less prior to the normal expiration of enlistment or normal expiration of enlistment as extended. Article C–10317 and this paragraph will be shown as authority for discharge. Attention is invited to paragraph (12) of this article relative to monetary benefits.

2. *Convenience of the Government.*

a. One year or less prior to normal expiration of enlistment or enlistment as extended but more than 3 months prior thereto. (See paragraph (3)(b) for exceptions). Article C–10306(1)(c) and this paragraph will be shown as authority for discharge in these cases.

b. Upon approval of a specific case by the Chief of Naval Personnel. For example, when an individual has an approved application for transfer to special duty, i.e., to attend a service school or to complete a tour of duty, for which additional obligated service is required, and when he is ineligible for early discharge and reenlistment in accordance with subparagraphs 1.a. and b. or 2.a. above, or is not eligible to reextend his enlistment under the provisions of article C–1407, or when the period for which he is eligible to reextend would not give him the required obligated service, consideration will be given for his early discharge for the purpose of reenlistment. His official application for discharge, together with all pertinent facts, and the comanding officer's recommendation, should be forwarded to the Chief of Naval Personnel for approval. In the event such early discharge is authorized, refund of a pro rata portion of the reenlistment bonus, if paid, will be required in accordance with the provisions of article A–4204.

NOTE.—Persons who have executed agreements to extend their enlistments may be discharged one year or less prior to the date the extension *would become operative* and reenlisted in accordance with this subparagraph provided the term for which they reenlist is equal to or greater than the total service obligation including the extension being cancelled.

(b) *Exceptions.* The following personnel may not be discharged and reenlisted pursuant to the provision of subparagraphs (a)1.b. and (a)2.a. above; however, for the purpose of preserving entitlement to veterans' educational benefits, they may be discharged and reenlisted one day early if otherwise eligible for reenlistment:

*1. Personnel in transit pursuant to permanent change of station orders where member would thereby become entitled to mileage payments in excess of those to which he would otherwise be entitled if he were discharged and reenlisted at his new permanent duty station. (Commanding Officers may discharge and reenlist personnel in those cases where excess mileage payments are not involved and provided member was recommended for reenlistment by his former command).

2. Personnel who have submitted application for transfer to the Fleet Reserve. (Personnel in receipt of authorization for transfer to the Fleet Reserve may not be discharged and reenlisted at any time without specific authority of the Chief of Naval Personnel.)

*3. Personnel who have been selected for warrant or commissioned grade in any of the Armed Forces, whose expiration of enlistment, including extensions if any, is subsequent to date of appointment or commissioning (Personnel who have an extension which has not yet become operative may not reenlist as provided in NOTE in subparagraph (3)(a)2.a above. Reenlistment for a greater period than that for which member is already obligated by extension agreement would provide benefits to which he is not entitled due to impending commissioning.)

4. Personnel who are pursuing a course of instruction leading to commissioned rank.

*5. Personnel temporarily assigned to a ship or station for humanitarian reasons will not be reenlisted without prior approval of the Chief of Naval Personnel.

6. Personnel undergoing investigation for alleged offenses, awaiting non-judicial punishment or trial by court-martial, undergoing non-judicial punishment, or serving sentence by court-martial, including probation

with respect to a suspended punitive discharge. (See Article C–10304(5)(h) and (6).)

(c) In no cases will the authority for early discharge and reenlistment be construed as authority for the early transfer to separation activities of those persons who desire to reenlist but who do not desire to do so at their present duty stations.

(d) Individuals desiring discharge and reenlistment one year or less prior to normal expiration of enlistment date shall be required to sign a written request to this effect on page 13 of their service record, and those being discharged more than 3 months early will be required to further certify that they understand that they will *not* be entitled to lump-sum payment for unused leave or mileage. Recoupment of reenlistment bonus (if paid) for unexpired portion of an enlistment or reenlistment is required in accordance with the Navy Comptroller Manual.

(4) *Place of reenlistment.* Reenlistment under continuous service conditions may be effected as follows:

(a) On board the activity from which discharged, within 24 hours following discharge. Reenlistment may be effected on board ship while serving at sea provided the necessary facilities for effecting payments incident to separation and for conducting separation physical and dental examinations are available on board.

A person temporarily transferred to an activity for discharge purposes may be reenlisted within 24 hours on board the activity to which permanently attached prior to discharge. Upon being reenlisted on board the activity to which permanently attached, such individual will be retained on board for duty. Appropriate entry shall be made in individual's service record stating nature of duty, such as on board for a normal

tour of shore duty, etc. Persons reenlisting at the activity to which transferred for discharge shall be assigned in accordance with the Enlisted Transfer Manual (NavPers 15909A). (series)

(b) *At Recruiting Stations.* After more than 24 hours following discharge, reenlistment may be effected only at a regular recruiting station unless modified by specific instructions of the Chief of Naval Personnel. Reenlistments may be effected for the terms specified in current recruiting instructions but must be effected within 3 months after date of discharge to receive benefits of "continuous service".

(5) *Terms of Reenlistment.* Individuals reenlisting on board for the first time three months or less prior to expiration of enlistment or within 3 months after date of discharge, under continuous service conditions at recruiting stations, may reenlist for a period of 2, 3, 4, or 6 years. Any subsequent on board reenlistments will be for a period of 4 or 6 years.

(6) *Citizenship Requirements.* Individuals reenlisting in the Regular Navy must be citizens or nationals of the United States, citizens of the Philippines, or aliens who present proof of declaration of intent to become citizens of the United States.

(7) *Physical Standards and Examinations.* The physical standards for all male applicants reenlistment are as outlined in Chapter 2 of Army Regulation 40–501—"Procurement Medical Fitness Standards." The physical standards for reenlistment of women applicants are prescribed in the Manual of the Medical Department. Waivers of physical defects may be recommended in accordance with the Manual of the Medical Department, Chapter 15. Persons who are classified as physically qualified for limited duty only shall be given an appropriate physical examination

and report thereof forwarded with appropriate recommendation to the Chief of Naval Personnel via the Chief of the Bureau of Medicine and Surgery in sufficient time to permit a final determination prior to normal discharge date. Physical examinations for the purpose of reenlistment shall be conducted by naval medical and dental officers if available, otherwise by medical and dental officers of the Department of the Army or of the Department of the Air Force, if available. When medical and dental officers of the Department of Defense are not available, waiver of physical examination for reenlistment within 24 hours following discharge, provided, there is no evidence in the member's health record of recent illness or injury and provided further that such reenlistment is in the same regular or reserve status, is authorized. However, physical examination by Department of Defense Medical Officer will be obtained at the earliest available opportunity at no cost to the Government. Appropriate notation will be made in member's service record to insure that the requirement for physical examination is not overlooked.

(8) *Reenlistment of enlisted personnel in patient status.* Commanding officers of all U.S. naval hospitals are hereby authorized to reenlist those personnel who so desire and whose enlistments expire while in a patient status provided it is anticipated that they will be physically and otherwise qualified for full duty immediately upon discharge from hospitalization. Certification will be made on report of physical examination for reenlistment that the member is a patient and that the defect or condition for which the member is under treatment would be unlikely to hinder his performance after return to full duty immediately upon discharge from hospitalization and that

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it may reasonably be anticipated that he will be physically qualified for reenlistment in accordance with existing regulations. Attention is invited to the provisions of article C–1407(8)(b) which authorizes commanding officers to cancel an Agreement to Extend Enlistment on the effective date of the extension, provided that on that date the individual concerned executes an enlistment contract for an authorized period of enlistment, but not less than the term of the extension agreement.

(9) *Dependency Criteria.* Prior to reenlistment, a full evaluation of dependency status should be made to insure that enlisted personnel who are administrative liabilities will not be continued on active duty, e.g., those personnel, particularly in the lower pay grades, who because of excessive numbers of dependents, become administrative burdens because of indebtedness, restrictions on assignment, or frequent requests for special consideration.

(10) *Enlisted personnel approaching or having over 30 years of active service.* Enlisted personnel approaching or having over 30 years of active service should be urged to take advantage of terminal assignment benefits in accordance with Chapter XIX, Enlisted Transfer Manual, or to retire. In any event, further active service obligation beyond 30 years is not authorized without prior referral to the Chief of Naval Personnel.

(11) *Reenlistment of Married Personnel.*

(a) If in all other respects qualified, married personnel of pay grade E–3 and pay grade E–4 (less than 7 years' service) may be reenlisted in the Regular Navy, or permitted to extend their current enlistment at the discretion of the commanding officer, provided: First, no valid complaints have been made against

the individual for nonpayment of debts; second, no valid complaints have been made against the man for nonsupport of wife, divorced wife awarded alimony by a court decree or children, if any; third, an adequate allotment has been or will be registered for support of wife, divorced wife awarded alimony by a court decree, or children, if any; and fourth, the person is considered desirable material for retention in the naval service. Commanding officers may recommend to the Chief of Naval Personnel individuals for reenlistment not meeting the requirements set forth herein if circumstances justify. Married men reenlisting in pay grade E–3 and pay grade E–4 (less than 7 years' service) at recruiting stations will not be required to register allotments until they report to their first permanent station.

(b) When a married person in pay grade E–3 or pay grade E–4 (less than 7 years' service) fails to meet the requirements in subparagraph (a) and is being discharged and not recommended for reenlistment, the commanding officer shall enter on page 13 of his service record, a concise statement giving pertinent reasons for not recommending reenlistment.

(12) *Monetary Benefits.* Information on reenlistment bonus, mileage, or lump-sum payment for unused leave pertaining to reenlistment is contained in Navy Comptroller Manual, Volume 4, Chapter 4, and in Chapter 4 of Joint Travel Regulations. Personnel shall be fully and properly apprised of monetary entitlements. Regular Navy personnel discharged 3 months or less prior to normal expiration of enlistment or expiration of enlistment as extended are entitled to receive payment of mileage and lump-sum payment for unused leave upon discharge, and reenlistment bonus upon reenlistment. Personnel dis-

charged *more than 3 months* prior to the expiration of enlistment or expiration of enlistment as extended in accordance with paragraph (3)(a)2., are entitled to reenlistment bonus upon reenlistment in the Regular Navy, but are *not* entitled to receive pay for unused leave or mileage. Recoupment of reenlistment bonus is not required in the case of early discharges not more than 3 months prior to expiration of enlistment but is required in the case of discharges more than 3 months prior to expiration of enlistment.

(13) *Service obligation.* Additional service performed under a reenlistment which immediately follows discharge is counted toward fulfillment of UMT&S obligation in the case of personnel who incurred such obligation under the provisions of section 4(d) of the Universal Military Training and Service Act, as amended. (50 USC App. 454(d), 10 USC 651). (See article C–1402.)

(14) *Rating in Which Reenlisted.* Regular Navy personnel reenlisting under continuous service conditions as provided herein shall be reenlisted in the rating held at discharge.

(15) *Assignment on Reenlistment.* Personnel reenlisted under continuous service conditions will be assigned as set forth in paragraph (4)(a) of this article and in accordance with procedures outlined in Enlisted Transfer Manual, NAVPERS 15909A (series).

(16) *Service Record and Page Entries.* Upon reenlistment, a new service record shall be prepared. Detailed instructions are contained in Section 3, Part B, of this Manual. Armed Forces Security Questionnaire (DD Form 98) shall be executed in accordance with current instructions.

(17) *The Separation and Reenlistment Guide (NAVPERS 15877)* should be consulted for detailed instructions regarding procedures, forms and orders required in the reenlistment processing.

(18) *Reenlistment from the Naval Reserve.* Enlistment or reenlistment in the Naval Reserve following discharge from the Regular Navy does not prejudice an individual's right to reenlist under continuous service in the Regular Navy, provided such reenlistment is effected within 3 months of discharge from the Regular Navy.

(19) *Reenlistment of Naval Reserve Personnel.* Reenlistment in the Naval Reserve for continuation of active duty or reenlistment in the Regular Navy of Naval Reservists will be effected only in accordance with separate instructions issued by the Chief of Naval Personnel.

(20) Attention is invited to restrictions on reenlistment of enlisted personnel assigned a limited duty designator as contained in article C–5208(6).

BUREAU OF NAVAL PERSONNEL MANUAL

1040300 REENLISTMENT WITH CONTINUOUS SERVICE AND CERTAIN ENLISTMENTS UNDER CONTINUOUS CONDITIONS

1. This article contains the general provisions governing certain enlistments under continuous service conditions and reenlistments in the Regular Navy or Naval Reserve under continuous service conditions. BUPERS Directives in the 1130 and 1133 series should be consulted for special information relating to the Open Rates/Skills List and/or conditions affecting reenlistments. The pertinent article should be con-

sulted for performance criteria required for reenlistment.

2. *Definitions:*

a. "Continuous service" as used herein is defined as service in the Regular Navy or Naval Reserve which is continued by reenlistment under the following conditions:

(1) Reenlistment within three months following discharge or release from active duty. A member who is reenlisted on the same day of the month three calendar months from date of discharge or release from active duty is reenlisted "within three months." For example, a member discharged or released from active duty on 7 December may be reenisted on any day up to and including 1 March and retain continuous service.

(2) Reenlistment within six months following discharge or release from active duty provided the member is classified RE–R1 and holds a rating listed on the current Open Rates/Skills List. A member who is reenlisted on the same day of the month six calendar months from date of discharge or release from active duty is reenlisted "within six months." A member separated in excess of three months is not entitled to a reenlistment bonus.

b. "Reenlistment"—If a member has previously served an enlistment in the Regular Navy (not including service as an inductee), his enlistment therein will be a reenlistment. If a member has previously served an enlistment in the Naval Reserve, his enlistment therein will be a reenlistment.

c. Enlistment (under continuous service conditions) as used in this article is applicable to the enlistment of a member of the Regular Navy who enlists in the Naval Reserve or a member of the Naval Reserve who

enlists in the Regular Navy within the time-frame defined above for "continuous service." This application of "continuous service" is applicable to an inductee who enlists in the Regular Navy or Naval Reserve within the time-frame defined above, after expiration of his obligated service, or at any time prior to the expiration of his obligated service.

3. To be eligible for enlistment or reenlistment in the Regular Navy, under this article, a member must be eligible for or have been separated from his most recent Regular Navy or Naval Reserve service by reason of expiration of enlistment or active obligated service, fulfillment of service obligation, or convenience of the Government; meet the eligibility standards prescribed including professional growth criteria and other quality control standards set forth in BUPERSINST 1133.22 series; and have been recommended by his commanding officer for enlistment or reenlistment. Members who do not meet all the aforementioned requirements may not be enlisted or reenlisted without the consent of the Chief of Naval Personnel. Members in the steward rating group and communications technicians ratings who are chief petty officers or below may not be enlisted or reenlisted to incur an active service obligation beyond 20 years without prior approval by the Chief of Naval Personnel. Members who have submited application or who are in receipt of authorization for tranfer to the Fleet Reserve may not enlist or reenlist without specific authority of the Chief of Naval Personnel. Members who require additional active obligated service to enable transfer to the Fleet Reserve on a specific date shall reenlist prior to submission of the application for such transfer. Enlistment or reenlistment

subsequent to transfer to the Fleet Reserve is not authorized.

4. Reservists who are discharged from the Naval Reserve for reasons of expiration of enlistment, fulfillment of service obligation, or convenience of the Government, and who are recommended for reenlistment, may be immediately reenlisted in the Naval Reserve provided they are physically and otherwise qualified as provided in this article.

5. Members who meet all the eligibility requirements, if physically qualified therefor, may be discharged and enlisted or reenlisted at the following time: (The appropriate article applicable for the separation and this article shall be shown as authority.)

a. On normal expiration of enlistment or normal expiration of enlistment as extended.

b. Three months or less prior to the normal expiration of enlistment, or normal expiration of enlistment as extended. The maximum early separation authorized for members on active duty shall be determined by the enlistment/reenlistment term elected from the following schedule:

Enlistment—Early separation
6 years—3 months
4 or 5 years—2 months
3 years—1 month
2 years—none

Those members who desire to reenlist for a period of two years and whose enlistment or obligated service expires on a Friday, Saturday, Sunday, or holiday, may be discharged up to three days prior to expiration of obligated service and reenlistment effected on the day preceding the weekend or holiday.

c. Fulfillment of service obligation incurred under the Military Selective Service Act.

d. Three months or less prior to fulfillment of service obligation under the Military Selective Service Act.

e. One year or less prior to normal expiration of enlistment or enlistment as extended but more than three months prior thereto. (Exceptions to this are listed later in this article.) The appropriate article on separation for convenience of the Government and this article will be shown as authority for discharge.

f. Upon approval of a specific case by the Chief of Naval Personnel. For example, when a member has an approved application for transfer to special duty; i.e., to attend a service school or to complete a tour of duty, for which additional obligated service is required, and when he is ineligible for early discharge and reenlistment in accordance with the above, or is not eligible to reextend his enlistment, or when the period for which he is eligible to reextend would not give him the required obligated service consideration will be given for his early discharge for the purpose of reenlistment. His official application for discharge, together with all pertinent facts, and his commanding officer's recommendation, should be forwarded to the Chief of Naval Personnel for approval. In the event such early discharge is authorized, refund of a pro rata portion of the reenlistment bonus, if paid, will be required.

g. Naval reservists on inactive duty may be discharged at any time for the purpose of enlisting in the Regular Navy in accordance with COMNAVCRUIT COMINST 1130.8 series.

h. Inductees and Naval reservists on active duty, except ACDUTRA, TEMACDU, recruiter-canvassers on extended active duty, or TAR personnel, may enlist in the Regular Navy at any time provided total active obligated service is for a minimum of four

years. For example, a reservist on active duty who has completed 18 months of active duty shall be required to enlist in the Regular Navy for a minimum period of three years. Terms of enlistment shall be in yearly increments. They need not be serving in a rate on the Open Rates/Skills List, or meet the continuous service requirement of being within one year of EAOS. They shall meet all current eligibility requirements for first term reenlistments including age limitations prescribed elsewhere in this Manual. TAR personnel may enlist in the Regular Navy provided they meet the above eligibility requirements and are serving in a general assignment with the Regular Navy as prescribed in the Enlisted Transfer Manual, NAVPERS 15909.

i. Reservists accepted for voluntary recall to active duty, including the TAR program, who require obligated service in excess of the time remaining in their enlistment, enlistment as extended, or service obligation under the Military Selective Service Act, may be discharged and reenlisted in the Naval Reserve immediately prior to recall to active duty.

6. The following members on active duty may not be discharged prior to normal expiration of enlistment and reenlisted pursuant to the provision above.

a. Members in transit pursuant to permanent change of station orders where the member would thereby become entitled to mileage payments in excess of those to which he would otherwise be entitled if he were discharged and reenlisted at his new permanent duty station. (Commanding officers may discharge and reenlist members in those cases where excess mileage payments are not involved and provided the member was recommended for reenlistment by his former commanding officer.) As used in this paragraph, "in transit" does not include members in TEMDU, TEMDUINS, or TEMADDINS status.

b. Members who have submitted application for transfer to the Fleet Reserve or who are in receipt of authorization for transfer to the Fleet Reserve may be discharged and reenlisted only upon the specific authority of the Chief of Naval Personnel.

c. Members who have been selected for warrant or commissioned grade in any of the Armed Forces, whose expiration of enlistment, including extensions if any, is subsequent to date of appointment or commissioning. (Members who have an extension which has not yet become operative may not reenlist as provided above for separations for convenience of the Government. Reenlistment for a greater period than that for which members is already obligated by extension agreement would provide benefits to which he is not entitled due to impending commissioning.)

d. Members who are pursuing a course of instruction leading to a commission except as specifically provided in other instructions issued by the Chief of Naval Personnel.

e. Members temporarily assigned to a ship or station for humanitarian reasons will not be reenlisted without prior approval of the Chief of Naval Personnel.

f. Members undergoing investigation for alleged offenses, awaiting nonjudicial punishment or trial by court-martial, undergoing nonjudicial punishment, or serving sentence by court-martial, including probation with respect to a suspended punitive discharge.

7. Members who have executed agreements to extend their enlistments may be discharged one year or less prior to the date the extension would become operative and reenlisted in accordance with this article

provided the term for which they reenlist is equal to or greater than the total service obligation including the extension being cancelled. Attention is invited to the obligated service requirements for Selective Reenlistment Bonus (SRB) eligibility set forth in directives.

8. The term of enlistment or reenlistment in the Naval Reserve on inactive duty shall be for two, three, four, five, or six years. Members initially enlisted USN who are completing their military obligation as required by the Military Selective Service Act in a Naval Reserve capacity may enlist in the Naval Reserve for a term of two, three, four, five, or six years, provided such enlistment is effected under continuous service conditions.

9. Members on active duty reenlisting in the Regular Navy or reenlisting in the Naval Reserve may reenlist on board for a term of two, three, four, five, or six years. The term of the enlistment contract must equal or exceed the period of service for which already obligated. In all cases, members reenlisting three months or less prior to the normal expiration of enlistment, or enlistment as extended, will be considered as having completed their initial contract. A reenlistment subsequent to a 24- through 48-months extension of the first enlistment is considered to be a first reenlistment for the purpose of determining the minimum reenlistment term available. Unless otherwise directed by the Chief of Naval Personnel, the minimum term of reenlistment authorized shall be determined from the following schedule:

Reenlistment—Term of Reenlistment

First—2, 3, 4, 5, or 6.

Second and subsequent (up to and including 10 years' active duty at time of reenlistment)—3, 4, 5, or 6.

Second and subsequent (over 10 years' active duty at time of reenlistment)—4, 5, or 6.

Members on active duty precluded from serving beyond specific points as outlined in the Reenlistment Quality Control Directive or other management control directives will be authorized to reenlist for terms as reflected in the appropriate directive. The terms of reenlistment will be dependent upon the member's length of service and the member's noncontinuation point (i.e., 20 years for E–4 personnel).

10. Naval reservists for whom a request for a waiver of any nature must be submitted shall not be considered to be in the category of those who may be reenlisted immediately. Such cases must be submitted for consideration in the Bureau of Naval Personnel and shall be processed in accordance with COMNAVCRUITCOMINST 1130.8 series. Applicants for immediate reenlistment shall be questioned regarding any civil offenses, police and juvenile delinquency records, or convictions occurring since the date of their previous enlistment. If an applicant indicates that he has been arrested for any reason he shall be processed in accordance with COMNAVCRUITCOMINST 1130.8 series.

11. Members on inactive duty who are participating in a Naval Reserve Program and who are eligible for reenlistment shall be notified at least three months prior to the expiration of their enlistment or service obligation concerning such expiration and the procedures established for reenlistment processing.

12. Members of the Ready Reserve on inactive duty whose records are held by the Naval Reserve Personnel Center (NRPC) may be reenlisted by mail. In lieu of physical examination, the member must submit a signed statement that, to the best of his knowl-

edge and belief, his physical condition is substantially the same as when he was last physically examined by the Navy. The Oath of Allegiance, which is mandatory, shall be administered by a commissioned officer of any component of the Navy, Marine Corps Army, Air Force, or Coast Guard; active, inactive, or retired.

13. In no case shall the authority for early discharge and reenlistment be construed as authority for the early transfer to separation activities of those members who desire to reenlist but who do not desire to do so at their present duty stations.

14. Members on active duty desiring discharge and reenlistment more than three months and less than one year prior to normal expiration of enlistment date shall be required to sign a written request to this effect on the Administrative Remarks, Page 13 of their service record. Those being discharged more than three months early shall be required to further certify that they understand that they will not be entitled to lump-sum payment for unused leave or mileage. Recoupment of reenlistment bonus (if paid) for unexpired portion of an enlistment or reenlistment is required in accordance with DODPM.

15. Reenlistment under continuous service conditions may be effected:

a. On board the activity from which discharged within 24 hours following discharge. Reenlistment may be effected on board ship while at sea provided the necessary facilities for effecting payments incident to separation and for conducting separation physical and dental examinations are available on board. A member temporarily transferred to an activity for discharge purposes may be reenlisted within 24 hours on board the last activity to which permanently attached prior to discharge. Upon being

reenlisted on board the activity to which permanently attached, such member will be retained on board for duty. Appropriate entry shall be made in the member's service record stating nature of duty, such as on board for a normal tour of shore duty. Persons reenlisting at the activity to which transferred for discharge shall be assigned in accordance with the Enlisted Transfer Manual.

b. At recruiting stations. After more than 24 hours following discharge, reenlistment shall be effected only at a regular recruiting station unless otherwise authorized by specific instructions of the Chief of Naval Personnel. Reenlistments may be effected for the terms specified in recruiting instructions but must be effected within three months after date of discharge or release from active duty to receive all benefits of continuous service or within six months to receive all benefits of continuous service except reenlistment bonus.

16. Members reenlisting in the Regular Navy or Naval Reserve must be citizens or nationals of the United States, citizens of the Philippines, or aliens who have been admitted to the United States for permanent residence evidenced by sighting of the Immigration and Naturalization Service I&NS Form I–151.

17. The physical standards for applicants for reenlistment are prescribed in the Manual of the Medical Department. Waivers of physical defects may be recommended in accordance with the Manual of the Medical Department. Members who are classified as physically qualified for limited duty only shall be given an appropriate physical examination and a report thereof shall be forwarded with appropriate recommendation to the Chief of Naval Personnel via the Chief, Bureau of Medicine and Surgery in sufficient time to permit a final determination prior to

normal separation date. Physical examinations for the purpose of reenlistment shall be conducted by Navy medical and dental officers if available, otherwise by medical and dental officers of the Department of the Army or Department of the Air Force, if available. When medical and dental officers of the Department of the Defense are not available, waiver of physical examination for reenlistment within 24 hours following discharge is authorized provided there is no evidence in the member's health record of recent illness or injury and provided further that such reeinlistment is in the same Regular or Reserve status. Physical examination by a Department of Defense medical officer shall be obtained at the earliest available opportunity at no cost to the Government. Appropriate notation shall be made in the member's service record to ensure that the requirement for a physical examination is not overlooked.

18. The commanding officer of a U.S. naval hospital is authorized to reenlist a member who is eligible and otherwise qualified, who so desires and whose enlistment expires while in a patient status, provided it is anticipated that the member will be physically and otherwise qualified for full duty immediately upon discharge from hospitalization. Certification shall be made on report of physical examination for reenlistment that the member is a patient and that the defect or condition for which the member is under treatment would be unlikely to hinder his performance after return to full duty immediately upon discharge from hospitalization and that it may reasonably be anticipated that he will be physically qualified for reenlistment in accordance with regulations. Attention is invited to the article which authorizes commanding officers to cancel an Agreement to Extend Enlistment on the effective date of the ex-

tension provided that on that date the member concerned executes an enlistment contract for an authorized period of enlistment not less than the term of the extension agreement.

19. Prior to reenlistment, a full evaluation of dependency status should be made to ensure that enlisted personnel who are administrative liabilities will not be continued on active duty; e.g., those personnel, particularly in the lower pay grades, who because of excessive numbers of dependents become administrative burdens because of indebtedness, restrictions on assignment, or frequent requests for special consideration.

20. Enlisted personnel approaching or having over 30 years of active service should be urged to take advantage of terminal assignment benefits in accordance with the Enlisted Transfer Manual, or to retire. Active service obligation beyond 30 years is not authorized without prior approval of the Chief of Naval Personnel.

21. At the discretion of the commanding officer and if in all other respects qualified, married personnel of pay grade E–3 or pay grade E–4 with less than seven years service may be reenlisted in the Regular Navy or permitted to extend their current enlistment provided no valid complaints have been made against the member for nonpayment of debts; for nonsupport of wife, divorced wife awarded alimony by a court decree, or children, if any; an adequate allotment has been or will be registered for support of wife, divorced wife awarded alimony by a court decree, or children, if any; and the member is considered desirable material for retention in the naval service. Members serving in pay grade E–3 must have fulfilled the professional growth standards specified for first re-

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enlistment as set forth in BUPERSINST 1133.22 series. Commanding officers may recommend to the Chief of Naval Personnel members for reenlistment not meeting the requirements set forth herein if circumstances justify. Married men reenlisting in pay grade E–3 or pay grade E–4 with less than seven years service at recruiting stations who desire to register allotments, may do so upon reporting to their first permanent station. When a married member in pay grade E–3 or pay grade E–4 with less than seven years service fails to meet the requirements in this paragraph and is being discharged and not recommended for reenlistment, the commanding officer shall enter on Page 13 of his service record a concise statement giving pertinent reasons for not recommending reenlistment.

22. Information on reenlistment bonus, mileage, or lump-sum payment for unused leave pertaining to reenlistment is contained in pay directives and Joint Travel Regulations. Personnel shall be fully and properly apprised of monetary entitlements. Regular Navy personnel discharged three months or less prior to normal expiration of enlistment or expiration of enlistment as extended are entitled to receive payment of mileage and lump-sum payment for unused leave upon discharge, and reenlistment bonus upon reenlistment. Personnel discharged more than three months prior to the expiration of enlistment or expiration of enlistment as extended are entitled to a reenlistment bonus upon reenlistment in the Regular Navy but are not entitled to receive pay for unused leave or mileage. Recoupment of reenlistment bonus is not required in the case of early discharges not more than three months prior to expiration of enlistment.

23. Additional service performed under a reenlistment which immediately follows discharge is counted toward fulfillment of MSS obligation in the case of members who incurred such obligation under the provisions of the Military Selective Service Act, as amended (10 U.S.C. 651).

24. Members reenlisting under continuous service conditions as provided herein shall be reenlisted in the rate held at discharge. Personnel classified RE–R1 reenlisted under continuous service conditions in excess of three months but not more than six months after discharge may reenlist in the highest rate held which is listed on the current Open Rates/Skills List, but are not enlisted to reenlistment bonus.

25. Members discharged by reason of hardship/dependency may reenlist under continuous service conditions in rate held at time of discharge, provided such members submit documentation that the reason for which they were discharged has been alleviated with little likelihood of recurrence. Prior approval of the Chief of Naval Personnel is required.

26. Members reenlisted under continuous service conditions will be assigned as set forth in this article and in accordance with procedures outlined in the Enlisted Transfer Manual.

27. Upon reenlistment, a new service record shall be prepared.

28. The Separation and Reenlistment Guide, Addendum 1, TRANSMAN, NAVPERS 15909, should be consulted for instructions regarding procedures, forms, and orders required in the reenlistment processing.

29. Enlistment or reenlistment in the Naval Reserve following discharge from the Regular Navy does not prejudice a member's right to reenlist under continuous service conditions in the Regular Navy.

30. Attention is invited to restrictions on reenlistment of enlisted personnel assigned a limited duty designator. (See applicable articles in this Manual.)

1050150 EXTENSIONS OF ENLISTMENTS

1. *Definitions.* In the discussion of extensions of enlistments in this article the following definitions are applicable:

a. "Agreement to extend enlistment" or "enlistment as extended" refers to the legal form of agreement, Agreement to Extend Enlistment, NAVPERS 1070/621, Page 1A of the service record, and not to an unofficial agreement of personal assurance of intention to extend. Agreements on other than the legal form are of an informal and unofficial nature and could be repudiated or withdrawn by the member. Clerical instructions for preparation of the Page 1A are contained in the PAYPERSMAN, NAVSO P-3050.

b. "Execution of the Agreement to Extend Enlistment" or "execution of extension" refers to the signature of NAVPERS 1070/621 by the member concerned and an official authorized in this article to accept the agreement in behalf of the Navy.

c. "Extension becomes operative" or "operative date" refers to the date on which the extension begins to run, that is, the date next following the normal date of expiration of enlistment, or the date of expiration of enlistment as extended or as adjusted for the purpose of making up time not served, as appropriate. Extension agreements may not be cancelled after the operative date. In any case in which it appears that the extension should have been cancelled, the Agreement to Extend Enlistment shall be completed and the case referred to the Chief of Naval Personnel for decision.

d. "Extension becomes binding" refers to the date on which the extension is executed (signed), after which it may not be cancelled except in accordance with the provisions of this Manual in effect at the time the agreement is signed.

2. Following are the terms and conditions under which Regular Navy and Naval Reserve members serving on active duty are permitted to extend their enlistments:

a. Except as otherwise provided herein, members who are serving under an enlistment contract may extend or re-extend their enlistments by their voluntary agreement, subject to approval by their commanding officer, regardless of whether serving in a first or subsequent enlistment.

b. Extensions shall be executed in increments of one or more months not to exceed an aggregate of 48 months on any single enlistment.

c. Members shall be qualified in all respects for reenlistment except that professional growth criteria may be waived as set forth in BUPERSINST 1133.22 series. Members who are not eligible for reenlistment for any reason other than professional growth may not extend their enlistments without prior approval of the Chief of Naval Personnel. Extensions of enlistment by married members in pay grades E–3 and E–4 shall be subject to the restrictions governing reenlistment of such members. Members in certain ratings (See BUPERSINST 1133 series) who are chief petty officers or below may not extend their enlistments beyond 20 years of day-for-day total active service without prior approval of the Chief of Naval Personnel. Commanding officers should set forth all

pertinent facts and their recommendation in the forwarding endorsement to the request for such approval.

d. Former USN members transferred to the Naval Reserve who have in fact been released from active duty to complete their Selective Service obligation and who return to active duty voluntarily or by recall, are not eligible to execute an extension of enlistment contract. Such members must reenlist if they need or desire to acquire obligated service. This restriction does not apply to members who, prior to their release, indicate a desire to remain on active duty and who need to extend their enlistment contract. Reservists in the latter category may need an extension of enlistment contract and an active duty agreement.

e. At no time may an extension of enlistment contract be executed for the purpose of extending an enlistment, or enlistment as extended, which has already expired.

f. Members who are in receipt of an authorization for transfer to the Fleet Reserve may not extend their enlistments without specific approval of the Chief of Naval Personnel. Extension of enlistment subsequent to transfer to the Fleet Reserve is not appropriate since members in the Fleet Reserve do not serve under an enlistment contract.

3. Conditional extensions may be executed for the following reasons regardless of remaining obligated service:

a. To complete a cruise or deployment.

b. To obtain sufficient obligated service for advancement to pay grade E–5 or higher.

c. To acquire necessary obligated service for programs specified in this Manual, Enlisted Transfer Manual, and/or directives. Such programs include

Fleet Reserve, retirement, quality control, special training, and duty assignments.

d. To change the expiration of active obligated service (EAOS) date of a member serving on any toured duty (sea or shore) to coincide with his projected rotation date (PRD). An extension for this reason may be executed only one time.

e. To obtain maternity care benefits for a dependent wife. A member whose normal EAOS falls within the wife's pregnancy or postnatal period may execute an extension of up to one year in order to receive maternity benefits, provided the member's services have been satisfactory and can be utilized effectively during the period of the extension. An extension agreement for this reason shall not be executed after the member has been transferred to a separation activity. For the purpose of this extension the postnatal period cover the two months following the birth of the child. Extensions authorized for this reason may be in addition to other extensions executed in accordance with this as they provided the maximum 48 months allowed on one enlistment is not exceeded. Unusual cases may be referred to the Chief of Naval Personnel for resolution.

4. Unconditional extensions may be executed to extend enlistment up to a maximum of 48 months. Unconditional extensions for less than 24 months shall not be executed unless specifically directed by the Chief of Naval Personnel. The minimum unconditional extension authorized shall be determined from the following schedule:

Enlistment—Unconditional Extension (months)

First—24 through 48.

Second and subsequent (up to and including 10 years' active duty at time of extension)—36 through 48.

Second and subsequent (over 10 years' active duty at time of extension)—48.

5. To execute an extension, the Agreement to Extend Enlistment, NAVPERS 1070/621, shall be completed and signed on, or prior to, expiration of enlistment by the member and the official accepting the agreement in behalf of the Navy. An officer, petty officer, or civilian authorized in accordance with the provisions of this Manual to sign service record pages may accept extension agreements in behalf of the Navy and witness the member's signature. Agreements entered into subsequent to the date of expiration of enlistment are without legal force and effect. The following time limits for executing agreements to extend will govern:

a. Conditional agreements to extend, such as qualifying for advancement, for a cruise or deployment for entrance into a service school, for any special program, as necessary under the Reenlistment Quality Control Program, or for any other duty requiring additional obligated service, may be executed at any time during an enlistment. The reason for the tension will be entered on Page 1A in accordance with the applicable directive. Agreements to extend enlistments may not be conditioned upon assignment to a specific area or duty station, but shall be for a general area (i.e., overseas, Continental U.S.) and as prescribed in the Enlisted Transfer Manual, NAVPERS 15909, or as authorized by the Chief of Naval Personnel.

b. Unconditional agreements to extend enlistment up to a maximum of 48 months may be executed at any time during an enlistment. An availability report shall be submitted promptly to these cases in accordance with the Enlisted Transfer Manual and the following reason for extension entered on the Page 1A:

"To continue career, I understand that this extension becomes binding upon execution and may not thereafter be cancelled except as provided in BUPERSMAN 1050150."

6. At the time the extension becomes operative or as soon thereafter as practicable, the remaining portions of the Agreement to Extend Enlistment form shall be completed. It should be noted that even though this part of the extension form is not completed at the proper time, the legality is not affected and the operative date is not changed.

7. A physical examination is required prior to the operative date of an extension of enlistment, or combination of extensions, totalling two years or more unless the member has received a complete physical examination within the preceding 12 months. A physical examination is not required for an extension of enlistment or extensions totalling less than two years if the member is currently serving on full duty without physical limitations unless such examination is considered warranted by the medical officer. Physical examinations required above shall be conducted just prior to and as near the operative date of the extension as practicable by Navy medical and dental officers, if available, or other Department of Defense medical and dental officers. When such officers are not available, and provided there is no evidence in the member's health record of recent illness or injury, waiver of the physical examination is authorized pending examination at the earliest available opportunity at no travel cost to the Government. Appropriate entry shall be made on the Administrative Remarks, Page 13 of the member's service record, to ensure the required physical examination is not overlooked.

8. An extension agreement is canceled by completing the appropriate portion of the Page 1A. A valid extension of enlistment that has become operative cannot be cancelled. If it appears that an extension should have been cancelled, complete the Agreement to Extend Enlistment and refer the case to the Chief of Naval Personnel for decision. A request or recommendation for cancellation of an agreement to extend enlistment that appears meritorious but is not authorized below shall be forwarded to the Chief of Naval Personnel for determination provided the extension has not become operative.

9. Commanding officers shall cancel agreements to extend enlistment, prior to operative date:

a. When a member is on unauthorized absence on date his enlistment would otherwise expire unless it is considered by the commanding officer that intention to absent himself was for the purpose of abrogating the agreement to extend.

b. When closing a member's record because of desertion.

c. Except as provided below, when a member, through no fault of his own, has failed to receive any of the benefits for which the extension was executed by the day next preceding the operative date of the extension. Thus, if a member executed an agreement to extend enlistment and has not been ordered or assigned to duty, such as duty ashore, overseas service, or any special program, for which he agreed to extend or has not had his PRD adjusted, not been advanced, or has not received any benefits therefrom, by the day next preceding the date the extension would become operative, the agreement to extend enlistment shall be cancelled. Members whose extensions are cancelled pursuant to the above who desire

to continue on active duty may simultaneously therewith execute new extension or reenlist in accordance with appropriate articles in this Manual notwithstanding the time limits herein specified. In such cases if the member executes a new extension, show as a reason "To continue career."

d. When appropriate where a member is disenrolled from a specialized course of instruction (see appropriate article in this Manual). Cite this article as cancellation/reexecution authority.

e. When a member reenlists. The extension(s) shall then be cancelled as of the date of reenlistment.

1. When a member, upon being physically examined for the extension, is found to be not physically qualified for retention in the service with the exceptions of the following which shall be forwarded to the Chief of Naval Personnel for determination in time to permit a decision prior to the operative date of the extension:

(1) When a significant benefit resulted from the extension, e.g., nuclear power or advanced electronics training, advancement, or accompanied overseas tour.

(2) When the extension is for a period of 24 months or more, regardless of the reason for which the extension was executed.

(3) When a member, upon being physically examined for the extension, is found not to be physically qualified and is subsequently placed in a limited duty status. For a member who is found to be disqualified due to obesity which is not due to a medical disorder. BUPERSMAN 3420440 and BUPERSINST 6110.2/ BUMEDINST 6110.10 series are applicable.

Obesity in itself is an administrative rather than a physical disqualifying factor and should not be used for basis of cancellation of an extension of agreement in accordance with this article.

When cancellation of a member's extension agreement requires prior approval of the Chief of Naval Personnel, the following information shall be provided:

(a) Name, rate, social security number
(b) Period of the extension agreement
(c) Reason for the extension agreement
(d) Diagnosis
(e) Prognosis
(f) Estimated period of medical treatment
(g) Name and telephone number of contact at the command in the event additional information is needed.

A member, whose extension agreement has been cancelled under the above provisions, shall be transferred to a naval hospital for treatment and disposition. Retention of such members beyond normal expiration of enlistment will be pursuant to the article governing expiration of enlistment while undergoing medical treatment. Personnel so retained are not eligible to execute extensions of enlistment. They may be reenlisted while in a patient status as provided in the article governing active duty reenlistment with continuous service.

g. When the extension resulted in no significant benefit to a member no longer recommended for reenlistment because of failure to meet the minimum reenlistment standards set forth in this Manual and BUPERSINST 1133.22 series, or unsatisfactory performance of duty or conduct, and who, in the opinion of the commanding officer, lacks career potential. A full statement of the facts shall be included in a Page 13 service record entry with notation that the member is not recommended for reenlistment. When cancellation of an agreement to extend is recommended under

the above provision but a significant benefit resulted from the extension, e.g., nuclear power or advanced electronics training, accompanied overseas tour, or advancement, the case shall be forwarded to the Chief of Naval Personnel for determination in time to permit a decision prior to the operative date.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-413

UNITED STATES OF AMERICA, *et al.*,

Petitioners,

v.

NICHOLAS J. LARIONOFF, JR., *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS

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IN THE

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OCTOBER TERM, 1976

No. 76-413

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v.

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Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS

QUESTION PRESENTED

Whether the respondents acquired a contractual entitlement under applicable statutes and regulations to the payment of variable reenlistment bonuses at the time they agreed to extend their enlistments in the United States Navy and thereby became bound to serve an additional two years on their enlistment contracts.

STATEMENT

Seven United States Navy enlisted men brought this class action to recover their variable reenlistment bonuses. In the event that payment of the bonuses was not granted, they sought rescission of the agreements extending their enlistments two years and honorable discharges upon completion of their initial four-year terms of service.

1. At the time the respondents enlisted in the Navy they were advised, either by their recruiters or by a classifier during recruit training, of the Navy's Advanced Electronic Field (AEF) Program. This program required that an enlisted man extend his initial four-year contract two additional years. In return, the plaintiffs were told they would receive advanced training in a certain "critical military skill" in the electronics field, rapid promotion, and a Variable Reenlistment Bonus (VRB) (App. 13-22).[1] The VRB was described to the respondents as a bonus paid at the end of the initial four-year enlistment in consideration for the two-year extension *(id)*. The bonuses being paid in the AEF field at that time were the highest allowed, and each of the respondents was advised of this fact. At no time, however, when they were considering entering the AEF program, were they told that the VRB was subject to change by administrative regulation or congressional legislation.

[1]Upon completion of their specialized training, the respondents were guaranteed automatic advancement in rank and pay grade. Navy BUPERS Instruction 1430.14C (Aug. 30, 1968). The VRB was to be paid the respondents when they began serving their extension. In addition to the VRB, a Regular Reenlistment Bonus (RRB) was paid to those who reenlisted for the first time within three months after their discharge or release date. Act of September 7, 1962, Pub. L. No. 87-649, 76 Stat. 467 (Pet. App. 82a-85a), *superseded by*, Armed Forces Enlisted Bonus Revision Act of 1974, Pub. L. No. 93-277, 88 Stat. 119 (Pet. App. 85a-89a).

All of the respondents made the decision to enter the program either at the time of their original enlistment or during their recruit training.[2] In addition to the normal enlistment contract they also executed an "Agreement to Extend Enlistment." Typical of all agreements was that signed by respondent Larionoff which read in pertinent part (*id.* at 157):

> I[,] NICHOLAS JOHN LARIONOFF JR., * * * having enlisted in the Navy of the United States on 23 JUN 69 for FOUR years, in consideration of the pay, allowances, and benefits which will accrue to me during the continuances of my service, voluntarily agree to extend my enlistment as authorized by Section 5539, of Title 10, United States Code,[3] and the regulations issued pursuant thereto. I voluntarily agree to extend my enlistment for a period of TWO years from the date of expiration thereof, subject to the provisions and obligations of my said contract of enlistment of which this, my voluntary agreement, shall form a part.
>
> REASON FOR EXTENSION: "Training (Advanced Electronics Field (AEF) Program * * *). I

[2]John Clay Smith enlisted in the Navy on October 1, 1968, and executed his extension agreement on October 15, 1968; Paul E. Boudreau enlisted on January 3, 1969, and executed his extension agreement on January 31, 1969; Joseph R. Tomaino enlisted on March 28, 1969, and executed his agreement on April 14, 1969; Nicholas J. Larionoff, Jr. enlisted on June 23, 1969, and executed his extension agreement on July 9, 1969; Thomas W. Dietz enlisted on September 3, 1969, and executed his extension agreement on September 26, 1969; Johnnie S. Johnson enlisted and executed his extension agreement on August 28, 1970; Lawrence E. White enlisted on March 13, 1969, entered the AEF program on April 1, 1969, and executed his extension agreement on July 23, 1969 (App. 30-35).

[3]Repealed by Act of January 2, 1968, Pub. L. No. 90-235, 81 Stat. 756, § 2(a)(3) (codified in 10 U.S.C. § 509 (Pet. Add. 44) and 37 U.S.C. § 906 (Pet. App. 89a)).

understand this extension agreement becomes binding upon execution and thereafter may not be cancelled except as set forth in BUPERS Manual, Article C-1407."[4]

* * * *

SUBSCRIBED and sworn to * * * this 9th day of JULY 1969 and this contract is hereby perfected and accepted for and on behalf of the United States. Service thereunder to begin from the date following the date the original contract of enlistment would have expired had it not been extended. This is the FIRST extension of current enlistment.[5]

As stated in the agreement, in consideration of the extension the respondents would receive "pay, allowances, and benefits." The government has conceded that the term "pay" in the agreement includes variable bonuses (Pet. App. 18a n.23, 56a n.2).

Upon completion of this advanced AEF training, the respondents were advanced to the rank of petty officer third class in the CTM rating and were advanced in pay grade from E-3 to E-4 (App. 30-35). At this time they also signed a standard service record entry acknowledging that they had in fact received the advanced training and had been advanced in pay grade.[6]

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[4]Navy BUPERS Manual, Art. C-1407, is set forth at App. 138-45. This article has been superseded by Navy BUPERS Manual, Art. 1050150 (Pet. Add. 94-103).

[5]In addition to executing the extension agreements, the respondents and other class members signed documents requesting assignment to the AEF program and acknowledging their two-year extension (App. 30-35).

[6]The document executed by respondent Larionoff, which was typical of those executed by all other class members, reads in pertinent part:

> I understand and agree that upon my being advanced to pay grade E-4 in accordance with BUPERSINST 1430.14

[footnote continued]

On March 23, 1972, subsequent to the time the respondents signed their extension agreements but prior to the expiration of their initial four-year enlistment, the Navy published a revised instruction on the VRB program.[7] This instruction deleted the CTM rate from the list of "critical military skills" effective July 1, 1972. After their initial four-years had been served, the respondents were required to sign their extension agreements. At this point they inquired about the payment of their variable bonuses, but they were informed that their rate had been deleted from the VRB list and they were entitled to receive only the Regular Reenlistment Bonus. Petitioner White refused to sign the extension agreement when he learned that he was not entitled to the anticipated award (*id.* at 21, 26). He was informed that his signature was not necessary because he was bound by the original extension agreement which he had signed nearly four years earlier (*id.* at 21).

Having failed to achieve a positive result through Navy channels, the respondents sought to remedy their predicament through their elected officials (*id.* at 173). The Navy's response to congressional inquiry was that while the CTM rate had been at critically low levels and eligible for the variable bonus when the respondents

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> series, that page 1A ["Agreement to Extend Enlistment"] date 09 JUL 69, which was executed for the purpose of AEF Program, will become binding and will serve to fulfill the obligated service requirements for automatic advancement. I understand that any future cancellation of obligated service requirements for the purpose of AEF Program will not serve as reason for cancellation of page 1A dated 09 JUL 69 except as set forth in BUPERSMAN 1050300.

(Pet. App. 6a n.7).

[7]Navy BUPERS Instruction 1133.18E (March 23, 1972) (App. 110).

agreed to extend their enlistments, a subsequent review of manning levels dictated that the VRB be discontinued prior to that point at which the respondents began to serve their extension (*id.* at 172). With no other administrative remedy available, the respondents filed suit in the District Court for the District of Columbia.

2. The primary purpose in initiating the VRB program was "attaining and sustaining adequate career manning levels in designated military specialties."[8] While Congress set upper limits on the amounts that could be paid in bonuses, implementation of the program was left to the discretion of the Secretary of Defense. 37 U.S.C. §308(g) (superseded).[9] The Secretary of Defense, in turn, after establishing the policies to be achieved, the general method of achieving them, and the criteria to be examined in establishing a variable bonus system, delegated the administration of the program to the respective Secretaries of the services.[10] It was stressed that the key to the success of the program was inducing service members to serve beyond their initial four-year enlistment,[11] because it would be less costly to pay the VRB to a reenlistee than to completely retrain another individual. In line with this, one of the criteria to be used in determining which rates were to receive the variable bonus was "the training investment required in the military specialty."[12] A highly publicized campaign on

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[8]DOD Directive 1304.14, para. IV.A (September 3, 1970) (App. 40).

[9]37 U.S.C. § 308(g), *superseded by*, Armed Forces Enlisted Personnel Bonus Revision Act of 1974, Pub. L. No. 93-277, 88 Stat. 119 (codified in 37 U.S.C. § 308(a) (Pet. App. 85a-89a).

[10]DOD Directive 1304.14, para. IV.B and V.A. (App. 40-41, 50-51).

[11]*Id.* para. IV.A. (App. 40).

[12]*Id.* para. IV.D.1. (App. 42-43).

the VRB was to be conducted by the Secretaries of the services, and a special attempt was to be directed at increasing the number of people volunteering for these critical skills.[13]

Each service was instructed to regularly review their respective bonus programs to determine to what extent the bonuses paid to certain rates should be reduced or terminated. When a bonus was reduced or terminated, an enlisted man would receive the award effective on the date of his reenlistment or extension of enlistment.[14] A member could attain eligibility through modification of an existing service obligation if such modification was accomplished prior to the time when the party approving the modification was notified of the prospective change in bonus.[15]

Pursuant to the Department of Defense directives, the Navy published instructions applicable to its award system.[16] This instruction listed several eligibility criteria that an individual had to meet before he actually received the VRB payment. The member was required to be eligible for continuous service reenlistment or extension of enlistment, be eligible for his first Regular Reenlistment Bonus, have attained a certain rank in the critical skill, have served at least 21 months not including schooling, reenlist for a period which when combined with time already in service would not exceed 69 months, and, finally, have attained eligibility prior to the date when the variable bonus was changed or terminated.[17]

---

[13]*Id.* para. V.A.5 (App. 51).

[14]DOD Instruction 1304.15, para. VI.A. (Sept. 9, 1970) (App. 64).

[15]*Id.* para. V.B.1.f. (App. 61).

[16]Navy BUPERS Instruction 1133.18B (December 19, 1968) (App. 92-109). Each of the respondents agreed to extend their enlistments subsequent to the effective date of this instruction.

[17]*Id.* para. 6 (App. 97).

3. Based on this statutory and regulatory framework, the respondents filed suit in the district court under the Tucker Act, 28 U.S.C. § 1346(a)(2). It was the respondents' contention that the Navy's failure to pay them their variable bonuses was a breach of their contractual relationship (App. 7-12). On cross-motions for summary judgment, the court held that the class was proper under Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure[18] and ruled in favor of the respondents.

In the district court's opinion, the issue was solely contractual. The VRB had been an inducement to the respondents to extend their enlistments two years. Since they had committed themselves to an additional two years in a rate in which the Navy was then paying a bonus, and since they were bound to the extension agreement at the moment it was executed, the Court ruled that mutuality of agreement required that the Navy should also be bound (Pet. App. 73a-74a). Relying on a "cardinal rule of contract law," the district court maintained that the contract should be analyzed "in light of the situation and relationship of the parties, the circumstances surrounding them *at the time of the contract*, and the nature of the subject-matter and the apparent purpose of the contract" (*id.* at 74a) (emphasis in original). If the Government did not want to commit itself to payment of the VRB to the respondents, the

[18]In its order the Court defined the class as

> Those enlisted Navy personnel who had (or earned after entering a special training program) a critical military skill, who signed their first term reenlistment contract when the critical military skill was eligible for a Variable Reenlistment Bonus (VRB), but who were denied the VRB because their reenlistment began to run after the suspension of the VRB on July 1, 1972. . . .

(Pet. App. 80a-81a).

district court stated that they should have made this clear in the contract. Finally, the court held that because the contract was written by the Government it would be construed most strongly against them (*id.* at 75a).[19]

In the interim between the district court decision and the Government's appeal, Congress passed the Armed Forces Enlisted Bonus Revision Act of 1974.[20] This Act eliminated the Regular and Variable Reenlistment Bonuses and substituted in their place a Selective Reenlistment Bonus (SRB). Although the Act protected those enlisted personnel subsequently eligible for a Regular Reenlistment Bonus, there was no saving clause protecting the variable Reenlistment Bonus.[21] Of the respondents, only respondent Johnson completed his initial four-year enlistment after the enactment of the Bonus Revision Act.[22]

4. The district court's decision was affirmed by the District of Columbia Circuit Court of Appeals on February 17, 1976 (Pet. App. 1a-50a). The court of appeals, however, viewed the issue in a somewhat different light than the district court. Since "[a] soldier's entitlement to pay is dependent upon statutory right," the respondents' contract theory would be interpreted with regard to applicable military regulations (*id.* at 10a n.15, *quoting Bell v. United States*, 366 U.S. 393, 401

[19]The district court also substantially reduced the request by the respondents' attorney for attorneys' fees in accordance with the standards of Kiser v. Miller, 364 F. Supp. 1311 (D.D.C. 1973) (Pet. App. 76a-79a).

[20]Pub. L. No. 93-277, 88 Stat. 119 (codified in 37 U.S.C. §§ 308, 308a) (Pet. App. 85a-89a).

[21]Pub. L. No. 93-277, § 3.

[22]Respondent Johnson's two-year extension began on August 28, 1974. (App. 33).

(1961)). The court ruled that under the applicable military regulations the variable bonuses were part of the "consideration" for which the respondents had extended their enlistments (Pet. App. 10a).[23]

After a review of the legislative history of the Act establishing the VRB, the court concluded that Congress had intended that the bonus be "brought to the attention of enlisted personnel at the point in time when they are choosing whether and how long to continue military service" (*id.* at 16a, *citing* 111 Cong. Rec. 17201 (1965)). Because Congress had delegated the implementation and regulation of the VRB program to the Department of Defense, the court then focused on the pertinent regulations and the Government's contention that a service member did not become eligible to receive the award until he actually began serving his extension. At first glance, the court felt, the regulation dealing with the reduction or termination of variable bonuses might support the government's position. However, it ruled that the language in this directive was, at best, ambiguous (Pet. App. 19a, *citing* DOD Directive 1304.14, para. IV.F. (September 3, 1970)). The court suggested that the regulation providing that an enlisted man will receive the award effective on the date of his reenlistment or extension of enlistment might require payment to the respondents. (Pet. App. 19a n.25, *citing* DOD Instruction

[23]The respondents' case on appeal had rested on two theories: first, that the payment of the VRB was part of the "pay, allowances, and benefits" which were due them in consideration of their extension; and, second, that because they had relied to their detriment on the government's oral representations concerning the VRB, the government was promissorily estopped from denying them their bonuses. Since the court's decision rested on the former theory, it found it unnecessary to discuss the latter. (Pet. App. 9a-10a).

1304.15, para. VI.A. (Sept. 9, 1970)).[24] Even if this were not the case, an exception to this clause, which said that an enlisted member would be eligible for the award in effect when his eligibility was "attained through any modification of service obligation," mandated payment. (Pet. App. 20a-21a).[25]

These interpretations led the court of appeals to the conclusion that the variable bonus due the respondents was that bonus in effect the day that the respondents signed their extension of enlistment agreements. The Government's position was viewed as being inconsistent with legislative intent that a specific sum be offered to enlisted men with critical skills (*id.* at 23a). If the Navy's interpretation of the regulation were correct, the enlisted member in a critical rating would be forced to gamble at the time he agreed to extend his enlistment on what award would be applicable on the date he began serving his extension (*id.* at 23a-24a). Finally, the court of appeals "reinforced" its conclusion by ruling that ambiguous terms in the contract would be construed most strongly against the drafter of the agreement (*id.* at 25a).[26]

[24]The court felt that "extension of enlistment" was ambiguous and could just as easily be read to mean the date on which the extension agreement was signed.

[25]The applicable Navy regulation included an extension of enlistment as a "modification of an existing service obligation." (Pet. App. 20a-21a, *quoting* Navy BUPERS Instruction 1133.18E, para. 7.h. (March 23, 1972)).

[26]As the district court had ruled, the appeals court held that the government could have inserted a clause in the extension contract stating that the award to be paid would be that in effect on the date that the member began to serve his extension. Had such a clause been in the contract, it was the court's opinion that there would have been fewer extensions. (Pet. App. 24a, *citing* Affidavit of Thomas W. Dietz (April 20, 1973)).

Because of respondent Johnson's unique position, the court specifically addressed his contractual relationship with the Government in view of the Bonus Revision Act. Noting that contractual rights against the Government are protected by the fifth amendment, the court ruled that "Congressional power to abrogate existing government contracts is narrowly circumscribed" (*id.* at 29a, *citing Perry v. United States*, 294 U.S. 330 (1935); *Lynch v. United States*, 292 U.S. 571 (1934)). Since the legislative history of the Bonus Revision Act indicated that the primary concern of Congress was reducing expenditures, the court relied on *Lynch v. United States*, *supra*, which held that "Congress is without power to *reduce expenditures* by abrogating contractual obligations of the United States" (Pet. App. 29a, *quoting Lynch v. United States*, *supra*, at 580) (emphasis in original). The court acknowledged the opposite conclusion reached by the Fourth Circuit on this issue in *Carini v. United States*, 528 F.2d 738 (9th Cir. 1975), *petition for cert. pending* (No. 75-1695); but disagreed. The issue, as phrased by the Court in its denial of the Government's petition for rehearing, was "not whether the VRB can under some circumstances be considered a gratuity, but whether it ripened to a contract under the circumstances in the record" (Pet. App. 56a). The court distinguished the Government's example of social security as an instance where Congress could change the amount of money paid. Social security involved a "noncontractual right;" (*id.* at 56a n.3) but in this instance there was a contract between the parties, and the respondents had promised to spend an additional two years in the Navy in return for the VRB (*id.* at 60a). Agreeing with the government that as far as the amount of regular pay, statutory changes were acceptable, the court cited legislative intent that under

the variable bonus program, the member should be paid a specific sum not subject to future change (*id.* at 61a).[27]

SUMMARY OF ARGUMENT

The question presented by this case is whether the respondents acquired an entitlement to the payment of variable reenlistment bonuses at the time they agreed to extend their enlistment an additional five years. The court of appeals recognized that under *Bell v. United States*, 366 U.S. 393, 401 (1961), "[a] soldier's entitlement is dependent upon statutory right." Therefore, the respondent's contract theory was, in the court of appeals' opinion, primarily dependent upon the court's interpretation of the pertinent legislation and military regulations.

Although the Secretary of the Navy was delegated the responsibility of administering the Navy's VRB program, the Government's interpretation of the applicable regulations is, as the court of appeals noted, in conflict with the legislative intent behind the VRB program and undermines the explicit language of the appropriate Department of Defense regulations. The court of appeals correctly viewed the issue as whether, under these regulations, the "pay, allowances, and benefits" for which the respondents agreed to extend their enlistments included the VRB in effect at that time.

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[27] In other issues before the court on appeal, the respondents were denied rescission of the extension contract because they had an adequate remedy at law (Pet. App. 31a-33a). It was ruled that the class was properly certified under Rule 23(b)(1)(B) F.R. Civ. P. and that prejudgment notice was not required (*id.* at 33a-49a). Finally, the district court's application of Kiser v. Miller, 364 F. Supp. 1311 (D.D.C. 1973), to the issue of attorneys' fees was affirmed, but that aspect of the lower court's decision was remanded for an award determination for counsel's efforts on appeal (*id.* 49a-50a).

It was the design of Congress that the bonus be offered as an incentive toward a Navy career at that point when the enlisted man was deciding how long to remain in the military service. In line with this, the respondents became entitled to receive the variable bonus from the date they committed themselves to staying in the Navy beyond their initial four-year enlistments. Although other preliminary requirements had to be met before the payment was actually made to the respondents, the specific sum to be received was that in effect on the date that the "Agreement to Extend Enlistment" was signed.

This interpretation by the court of appeals is consistent with the legislative intent that a specific sum be offered to the enlisted man when he was deciding whether to reenlist or extend enlistment. It also satisfies the primary objective of the VRB program established by the Department of Defense directives in that retention of those with "critical skills" and adequate manning levels of those skills was ensured when the respondents incurred their additional two-year obligation. Only after its interpretation of the statutes and regulations did the court of appeals "reinforce" its decision by application of the contractual principle that ambiguous contract terms are construed most strongly against the drafter.

Under the Government's interpretation of the legislation and regulations, the Navy could be certain that its "critical skills" were adequately manned while at the same time avoid paying the variable bonus to those who had assured this manning level.

Although the respondents became entitled to a bonus on the date of their extension agreements, respondent Johnson's situation is viewed differently by the Government because the VRB program was abolished by Congress prior to the time he completed his initial four years. However, legislative history indicates that it was not the

intent of Congress that those who had extended their enlistments prior to the effective date of the Bonus Revision Act would be denied their bonuses. Furthermore, even if this were the congressional design, the purpose of the Act was clearly to reduce government expenditures, and under the doctrine expressed in *Lynch v. United States*, 292 U.S. 571 (1934), Congress is "without power to reduce expenditures by abrogating contractual obligations of the United States." 292 U.S. at 580. Since all the respondents became obligated to serve an extended enlistment when they signed their extension agreements, they are entitled to receive the bonuses in effect on those dates.

ARGUMENT

WHEN THE RESPONDENTS AGREED TO SERVE AN ADDITIONAL TWO YEARS ON THEIR ENLISTMENT CONTRACT THEY ACQUIRED A CONTRACTUAL ENTITLEMENT TO RECEIVE THE VARIABLE REENLISTMENT BONUSES IN EFFECT AT THAT TIME.

A. RESPONDENTS' ENTITLEMENT TO RECEIVE THEIR VARIABLE REENLISTMENT BONUSES IS DEPENDENT UPON AN INTERPRETATION OF THE APPLICABLE STATUTES AND REGULATIONS.

The relationship between a serviceman and the military is not one grounded upon the normal standards of contract law. As the Supreme Court noted in *Bell v. United States*, 366 U.S. 393, 401 (1961), "[a] soldier's entitlement to pay is dependent upon statutory right." The Court in *Bell* ruled that the Government's termination of pay of disloyal Korean War prisoners was not proper, despite the Government's argument that the prisoners' actions resulted in a material breach of contract and that as a result they were not entitled to their pay. The Court held that "common-law rules

governing private contracts have no place in the area of military pay" *Id.* Similarly the issue in this case must be resolved not by a reference to contract principles but by an analysis of the applicable statutes and military regulations in effect at the time that the respondents agreed to extend their enlistments.[28] The key phrase to

[28]Each of the respondents agreed to extend their enlistments at a time when the multiple applicable to the CTM rate was four. As will be shown, the regulations required that this be the bonus paid to the respondents upon completion of their initial four-year enlistment. Respondent Johnson's situation is different in that prior to the completion of his first four-years, Congress passed the Bonus Revision Act of 1974, Pub. L. No. 93-277, 88 Stat. 119 (codified in 37 U.S.C. §§ 308, 308a (Supp. IV 1974)). In his case there is the additional factor of whether or not Congress intended to terminate his entitlement to the VRB and if so, whether they had the power to do this.

It must be noted, however, that of the three appeals court decisions and several district court decisions, there is no disagreement among the courts with the principle that the respondents were entitled to the VRB in effect at the time they extended their enlistment. The disagreement arises over whether or not Congress intended to and could subsequently abolish this entitlement by abolishing the VRB program. *See, e.g.*, Collins v. Rumsfield, 542 F.2d 1109, 1112 (9th Cir. 1976), *petition for cert. pending sub nom.* Saylors v. United States (No. 76-677); Carini v. United States, 528 F.2d 738 (4th Cir. 1975), *petition for cert. pending* (No. 75-1695); Caola v. United States, 404 F. Supp. 1101 (D. Conn. 1975).

In *Collins* the court held that Congress' power to abolish the VRB program precluded court intervention. 542 F.2d at 1110. However, no opinion was expressed on those individuals who began to serve their extensions prior to enactment of the Bonus Revision Act. *Id.* at 1112. Judge Haynsworth in *Carini* distinguished *Larionoff* by noting that the *Larionoff* district court had held that the bonus could not be deprived by an amendment to Navy regulations. He stated that a court "might reasonably hold the Navy bound by its representation," but that it could not "bind Congressional power in areas committed to Congressional discretion." 528 F.2d at 741 n.7. The Government also acknowledges this distinction. In their petition for rehearing in the court of

[footnote continued]

be construed in the enlistment contract is "in consideration of the pay, allowances, and benefits which will accrue to me during the continuance of my service." The Government has conceded that the term "pay" in the extension agreement includes the variable bonus (Pet. App. 18a n.23, 56a n.2), and the lower courts have concluded that the respondents were induced to extend their enlistments by the promise of a bonus (Pet. App. 10a, 73a). The legislative history of the statute (Act of August 21, 1965, Pub. L. No. 89-132, § 3, 79 Stat. 547, *as amended* 37 U.S.C. § 308 (Supp. IV 1974)) and the applicable military regulations must be examined to determine if the VRB to be paid was that in effect on the date the extension agreement was signed or that effective on the date when the enlisted man began to serve his extension.

This was precisely the approach taken by the court of appeals. Contrary to the Government's contention that the court's "opening premise" was the contract rule that an agreement will be construe[d] most strongly against the Government, as . . . [the] drafter" (Pet. Brief 20, *quoting* Pet. App. 25a), the court of appeals made it clear that its decision was an interpretation of the applicable regulations as mandated by *Bell* (Pet. App. 10a n.15). Only after it had found the Government's construction of the Navy regulations to be contrary to congressional

appeals in *Larionoff*, they sought rehearing only on the issue of those individuals who became eligible for payment after the Bonus Revision Act of 1974 (Pet.App. 55a). Every district court to decide the issue of whether or not Congress could abolish the variable bonus program has held that they could not. *See, e.g.*, Caola v. United States, 404 F. Supp. 1101 (D. Conn. 1975); Collins v. Schlesinger, Civil No. 75-0053 (D. Hawaii May 20, 1975), *rev'd sub nom.*, Collins v. Rumsfield, 542 F.2d 1109 (9th Cir. 1976); Carini v. United States, Civil No. 74-88-N (E.D. Va. Jan. 7, 1975), *rev'd*, 528 F.2d 738 (4th Cir. 1975). For a complete listing of suits brought by or on behalf of individuals denied their VRB payments see Pet. App. 18-19 n.20.

intent, did the court "reinforce" its opinion with the contracts rule discussed above.[29]

Having established that the proper method of determining the bonus due the respondents is by an interpretation of the relevant legislative history and military regulations, it now becomes necessary to examine these documents.

[29]The court of appeals appears to have used this contract principle to refute any argument that the regulations interpreted were ambiguous, and, therefore, subject to a different interpretation. Corbin states that "after applying all the ordinary processes of interpretation, including all existing usages, general, local, technical, and the custom and agreement of the two parties with each other . . . ," if there is still doubt as to the meaning, the court will adopt the meaning which is less favorable to the draftee. 3 *Corbin on Contracts* §559 (1960).

Thus if the terms of the military regulations were ambiguous in light of the Congressional intent, which the court held they were not (Pet. App. 25a), they would be construed against the Government. Despite the fact that *Bell* states that common law contract principles are not applicable in the area of military pay, the relationship between a serviceman and the military still must be characterized as "contractual" in nature. The Government concedes this, and even argues that the contract principles applied by the court of appeals are not the correct contract principles (Pet. Brief 20-21). Furthermore, even though a member of the military has a changed "status," he retains the right to receive the benefit of the bargain in a dispute over his enlistment contract. *See* Peavy v. Warner, 493 F.2d 748, 750 (5th Cir. 1974).

B. UNDER THE APPLICABLE LEGISLATION AND MILITARY REGULATIONS, THE RESPONDENTS ARE ENTITLED TO THE VARIABLE REENLISTMENT BONUSES IN EFFECT ON THE DATE OF THEIR EXTENSION AGREEMENTS.

1. It was the intent of Congress in establishing the VRB program that an enlisted man should be paid the specific sum in effect at the time he makes the decision to extend his enlistment.

The payment of reenlistment bonuses to members of the armed services is a practice that has existed since 1795.[30] In 1954 Congress enacted provisions for payment of what came to be known as the Regular Reenlistment Bonus (Act of July 16, 1954, Pub. L. No. 83-506, § 2, 68 Stat. 488). This bonus consisted of the monthly basic pay of the individual at the time of his reenlistment, multiplied by the number of years for which he reenlisted. As a retention tool, however, this inducement was not very successful, and it became apparent to Congress that it was losing great numbers of the highly trained and qualified military personnel needed to operate its increasingly complex equipment. The military services were unable to offer these individuals any more than the standard reenlistment bonus. As a direct result of this problem Congress created the variable reenlistment bonus. The basic economic logic of the VRB program made sense. It was less costly to pay a bonus to induce a skilled technician to remain in the military than to completely train another individual; or in the words of Representative Bennett during House debate on the bill: "It is just plain good personnel planning to provide a $4,000 bonus to encourage reenlistment rather than pay $10,000 to train a replacement." 111 Cong. Rec. 17206

[30]See Pet. App. 11a-12a n.16 for a listing of previous legislative treatment of reenlistment bonuses.

(1965). Department of Defense testimony before the House of Representatives indicated that in certain critically undermanned skills, whenever an individual left the service after his first term, it cost the service $10,000 in addition to a reduction of operational capabilities. H.R. Rep. No. 549, 89th Cong., 1st Sess. 47 (1965).

The bonus was aimed at those individuals on whom Congress felt it would have the most impact. An examination of retention trends over the six years prior to the passage of the Act indicated that reenlistments after the first term were in excess of 85 percent, while reenlistments for those completing their first term were normally below 25 per cent. S. Rep. No. 544, 89th Cong., 1st Sess. 18 (1965), *reprinted in* [1965] U.S. Code Cong. & Ad. News 2745, 2748. Therefore, it was the intent of Congress, upon the advice of the Defense Department, to "concentrate retention money at the reenlistment decision point, thereby getting the most drawing power per retention dollar." *Id., reprinted in* [1965] U.S. Cong. Code & Ad. News at 2757. While the bonus paid to individuals was designed to be flexible so that it could be adjusted as certain skill requirements changed, it was the intent of Congress to authorize the offering of a specific multiple of the regular reenlistment bonus at that point when an enlisted man was deciding whether or not to remain in the military beyond his initial four-year enlistment. See 111 Cong. Rec. 17201 (1965) (remarks of Rep. Nedzi).

It is the Government's contention that Congress was interested in only offering the VRB to the reenlistee (Pet. Brief 38). There are two fundamental faults with this argument. First, as is evidenced by the language of the congressional reports; Congress' goal was retaining those individuals who had acquired certain critical skills. In order to retain them, it intended that the VRB be offered

at the decision making point. In the case of the respondents, this point was when they were deciding whether or not to extend their enlistments.[31] If these men became obligated to serve beyond their initial four-year term of enlistment, the congressional goal in enacting the VRB program was met, and the congressional design was, therefore, that they be entitled to receive the VRB in effect at the time they agreed to extend.[32] Any other interpretation would be inconsistent with the Defense Department's recommendation and Congress' desire that the bonus be offered at the critical "decision point."

Second, even if Congress intended that the bonus be offered only to those who reenlisted and not all those who agreed to serve beyond four years, 37 U.S.C. §906 provides that "[a] member of the ... Navy ... who extends his enlistment .... is entitled to the same pay and allowances as though he had reenlisted." Therefore, it is clear that the decision to extend should be treated

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[31]In fact, this was the only possible "decision point" for the respondents if they wished to enroll in the AEF program. As the government notes in its brief, there were several (44 of 62) critical rates which could have been attained by persons serving only four years (Pet. Brief 32-33). Enlisted men in these rates would not have to decide on reenlistment or extension until at or near the end of their enlistment. Respondents were not in such a position. To enter the AEF program they were required to make an extension decision early in their enlistment. This was the only time such decision could be made by them.

[32]The Navy's interpretation would also defeat congressional intent if the reverse situation to the one involved here were presented. If for example, an enlisted man agreed to extend his enlistment at a time when the VRB multiple was two, but by the time his initial enlistment expired that multiple had risen to four, the Navy would award a bonus of four times the RRB. Thus, legislative design that the bonus be the incentive is destroyed if there is no certainty to that bonus.

identical to the decision to reenlist, and Congress intended to offer the serviceman a specific bonus at the time such decision was made.

Congress did, however, delegate the implementation and administration of the VRB program to the Secretary of Defense. Therefore, an examination of Department of Defense directives concerning the program is essential to a determination of when entitlement to the bonus arose. Such an examination further reveals that the Navy's interpretation is incorrect.

> *2. Under the pertinent Department of Defense Directives and Instructions, the respondents were eligible to receive the variable reenlistment bonuses in effect on the dates of their extension agreements.*

It is the Navy's view that under the pertinent regulations, an enlisted man's entitlement to a variable bonus attaches on the day he begins to serve either his reenlistment or extension of enlistment (Pet. Brief 26). The Government correctly notes that in examining an administrative regulation "controlling weight" is to be given to the administrative interpretation. (Pet. Brief 26-27, *quoting Bowles v. Seminole Rock Co.*, 325 U.S. 410, 414 (1944)). There are two provisos to this rule, however. First, the legislative intent is often relevant if the words used in the regulation are in doubt. Second, administrative interpretation will be disregarded where it is "plainly erroneous or inconsistent with the regulation." *Bowles v. Seminole Rock Co., supra,* at 414. Congressional intent has already been examined and shown to be at odds with the Navy's interpretation. This interpretation also "undermine[s] the explicit language of . . . the appropriate regulations." (Pet. App. 22a).[33]

The directive and instruction issued by the Department of Defense subsequent to the passage of the VRB statute echo Congress' view that the primary objective in enacting the legislation was to retain those highly trained individuals with certain critical skills beyond their initial four-year enlistment. DOD Directive 1304.14, para. A.1. (Sept. 3, 1970) (App. 40). The variable bonus was to assist in "attaining and sustaining adequate career manning levels in designated military specialties" *id.*, and this goal was to be achieved through the use of the VRB as the "principle monetary incentive . . ." *Id.* para. C.1 (App. 41).

The main criteria to be examined in deciding whether a particular rate warranted the bonus was the projected manning shortages in that rate. These shortages were to be evaluated "in light of the training investment required in the military specialty." *Id.* para. IV.D.1. (App. 43).[34]

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[33]Bowles v. Seminole Rock Co. also involves a substantially different fact pattern than that presented here. In *Seminole Rock Co.*, a case involving maximum price regulation during World War II, the Administrator of the Office of Price Administration had published bulletins concurrently with the regulations and made "countless explanations and interpretations . . . to inquirers affected by [the regulation]." *Id.* at 417-18. In cases where *Seminole Rock Co.* has been followed, the administrative interpretations have been similarly consistent with congressional intent and have clearly been made a matter of public record by administrative rulings or bulletins. *See, e.g.*, Udall v. Tallman, 380 U.S. 1 (1964). However, where an administrative interpretation of a regulation has been unreasonable or inconsistent with its purpose, it has not been followed. Brennan v. Occupational Safety & Health Review Comm., 491 F.2d 1340, 1344 (2d Cir. 1974)

[34]"Training investment" is defined as:

> A quantitative index based on the length and cost of formal training required to qualify first term personnel in

[footnote continued]

It is obvious, therefore, that in light of the extensive training required for those in the CTM rate, an interpretation that the respondents became entitled to receive the VRB in effect when they agreed to serve an additional two years meets the criteria and established goals set by the Defense Department. Furthermore, the Secretary of Defense directed the Secretaries of the respective services to conduct an extensive publicity campaign on the VRB program. *Id.* para. V.A.5 (App. 51). Following this directive, the Navy required that prospective reenlistees be advised at their decision making point of the "[a]dvantages of early reenlistment to obtain present amount of VRB vice uncertainty of future value of the VRB." Navy BUPERS Inst. 1133.18B, para. 8.a. (December 19, 1968) (App. 99-100). Although this requirement applied to the Navy's reenlistment interview, the intent was obvious—get the enlisted man to obligate himself beyond that initial four-year enlistment and use the VRB as the incentive.

With the underlying objectives of the VRB program in mind, it becomes necessary to scrutinize those portions of the regulations pertaining to the reduction or termination of the variable bonus. DOD Instruction 1304.15, para. VI.A. (Sept. 9, 1970) states: "Members serving in a military specialty designated for reduction or termination of award . . . will receive *the award effective on the date of their reenlistment or extension of enlistment*, except as provided in paragraph V.B.1.f. above" (emphasis added). It is the Government's conten-

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a military specialty. The index for a military specialty establishes its relative position in an array of all military specialities in the Military Service concerned, with the military specialty requiring the longest and most costly training having the highest index.

DOD Directive 1304.14, para. III.L. (Sept. 3, 1970).

tion that the date of extension of enlistment is the date on which an enlisted member begins to serve his extension (Pet. Brief 28-29). In support of this they point to the fact that the reenlistee receives the bonus in effect on the date he begins to serve his reenlistment. This is true. However, the date the reenlistee begins to serve his reenlistment is also the day he agrees to serve beyond his initial enlistment. Thus the entitlement to the bonus is concurrent with the obligation of additional service. It would seem only logical as the court of appeals ruled, that "once someone agrees to perform certain services in exchange for a given sum of money, and the Government has received that performance—or, *as in this case insists on receiving it . . .*" a "contractual right" arises (Pet. App. at 59a, *citing Butler v. Pennsylvania*, 116 U.S. (10 How.) 131, 133-34 (1885) (emphasis in original)).[35] This logic is more persuasive in this instance where the respondents became bound to an additional two years when they signed their extension agreements. Under the regulations, it is immaterial that the reenlistee became entitled to the bonus in effect on the day he began to serve his reenlistment. The important factor is that he received the VRB in effect at the time he made the *decision* to reenlist. This construction is entirely consistent with legislative desire to offer the VRB at the "decision making" point, and would give the respondents an entitlement to the bonus in effect when they agreed to extend.

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[35]The Government refutes this holding of the court of appeals by contending that Congress did not intend a specific sum be paid in the bonus (Pet. Brief 25 n.35). However, under Bell v. United States, *supra*, military pay is subject to statutory control; and just as Congress has the power to change certain aspects of military pay, they also have the power to mandate that a specific bonus be offered and paid to those serving beyond their initial enlistments. As discussed earlier, this was the congressional intent in enacting the statute (see p. 20 *supra*.).

Under a proper interpretation of the DOD instruction, the date when an enlisted member began to serve his reenlistment or extension was important for only one reason—that was the date he became eligible for actual payment of his bonus. Navy BUPERS Instruction 1133.18B, para. 6 (December 19, 1968) (App. 97) lists those requirements that had to be met before an enlisted man would be paid his bonus. It is not the contention of the respondents that they would have been entitled to payment of the VRB had they not met these requirements. Rather, they were entitled to receive that payment in effect when they obligated themselves for an additional two years once they met these other requirements. In fact, the only time at which they could meet all these other requirements was at the conclusion of their initial enlistment.[36]

Another argument offered by the Government as to why entitlement to an award did not accrue until the beginning of an extension period is that the section on the extension agreement which contained the amount of the bonus to be paid was not filled in until the extension began (Pet. Brief 29-30). The reason for this is obvious upon an examination of the form. The mileage allowance and lump sum leave portions of the form would not be known and therefore could not be filled in until the end of the initial four-year enlistment. Furthermore, the complete uselessness of this form as evidence of a prior agreement was demonstrated in respondent White's case. When he refused to sign it, he was told that his extension would be put into effect based upon the agreement to extend that he had signed four years earlier. The form

[36]The court of appeals also noted that it was not eliminating these requirements but only holding that once the other requirements were met, the VRB paid would be that in effect when the extension of agreement was signed. (Pet. App. 22a n.27).

was useful, therefore, only as an indication of the mileage allowance and unused leave for which the enlisted man would be compensated.

However, assuming arguendo that the "award effective on the date of extension of enlistment" in DOD Instruction 1304.15 is that award in effect on the date that the enlisted man begins to serve his extension, the proviso to para. VI.A., para. V.B.I.f., offers an alternative rationale to support the respondents' position. DOD Instruction 1304.15, para. V.B.1.f. (App. 61) provides that a member is eligible to receive the award if he

> Attains eligibility prior to the effective date of termination of awards in any military specialty designated for termination of the award. Member must attain eligibility prior to the effective date of a reduction of award level to be eligible for the higher award level. *Eligibility attained through any modification of an existing service obligation,* including any early discharge granted pursuant to 10 U.S.C. 1171, must have been attained prior to the date the authority approving the modification was notified of the prospective termination or reduction of award in the military specialty.

(Emphasis added). The applicable Navy regulation defines an extension of enlistment as just such a modification of a service obligation. Navy BUPERS Instruction 1133.18E, para. 7.h. (March 23, 1972) (App. 115-16). Therefore, when the respondents modified their service obligations through their extension agreements they became entitled to receive the VRB in effect at that time.[37]

[37]In addition to this requirement, DOD Instruction 1304.15, para. V.B.1. lists the other conditions which must be met prior to payment of the bonus. Those conditions are virtually identical to those in Navy BUPERS Instructions 1133.18B, para. 6 (Dec. 19, 1968)

(See p. 7 *supra*.)

The Government chooses to interpret this section as being applicable in the "situation in which a service member could both agree to extend his enlistment and begin serving the extension during the 90-day period between the receipt of notice of a prospective reduction or termination of the VRB award for a particular skill and the effective date of such change" (Pet. Brief 32). Such a situation might not be "rare or unusual" (*id.*), but those entitled to the award under such an analysis of the regulation would be small in comparison with those in the respondents' status. Furthermore, this interpretation hardly comports with the legislative intent to offer the bonus at the point when a decision on extending must be made.

Although throughout this case the Government has denied that the respondents became entitled to a bonus effective the date they incurred an additional two-year obligation, there is other evidence that the Navy felt that it did in fact owe such an obligation to the respondents. The Joint Conference Report on the Bonus Revision Act reveals that when the House Armed Services Committee indicated that selective reenlistment bonuses would not be authorized for personnel for existing obligated service "[t]he Navy expressed great concern that the language of the bill might be interpreted to require it to abrogate an understanding it had with enlistees and would operate in such a way as to cause serious retention problems in its most critical career field." H.R. Conf. Rep. No. 985, 93d Cong., 2d Sess. (1974), *reprinted in* [1974] U.S. Code Cong. & Ad. News, 2998, 3000. The Navy was primarily concerned with those personnel in their nuclear power field. Congress, in an attempt to encourage longer reenlistments or extensions, made the SRB substantially larger than the VRB. The Navy's concern was that those who had existing obligated service under the VRB program, might be locked into accepting the variable

bonus and not be able to extend for a longer period of time and thus receive the SRB. The resulting discontent would damage reenlistments in the "often critical reenlistment period" at the six to ten year time frame. *Id.*[38] One thing is clear, however: The Navy felt that it was committed to the payment of the variable bonus to those who had extended their enlistments on the inducement of the VRB.[39]

The Government's interpretation of legislative intent and the military regulations leaves the enlisted men in the respondents' position "hedging his bet" at his decision making point. He is forced to decide whether to stay in the Navy beyond his initial term not knowing if the then existing VRB will continue. If he extends and the VRB multiple remains high, he wins; if it is reduced or abolished, he loses. In either case, it is not the career incentive that Congress or the Defense Department intended it to be. The obligation to serve an additional two years was incurred by the respondents "in considera-

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[38]Congress alleviated this problem by giving the person who had extended under the VRB program the option of cancelling his prior extension, and his right to receive the VRB, and reenlisting for a period of "at least two years beyond the cancelled extension." H.R. Conf. Rep. No. 985, 93d Cong., 2d Sess. 4 (1974).

[39]In Collins v. Rumsfield, 542 F.2d 1109 (9th Cir. 1976), *petition for cert. pending sub nom.* Saylors v. United States (No. 76-677), Judge Sneed reached the opposite conclusion. He felt that the Navy's concern was "completely at odds with the notion that the enlistees about whom the Navy was concerned already had accrued rights to VRB's." *Id.* at 1111. Judge Sneed gives no reason for this statement, but it is hard to imagine what obligation the Navy was concerned about if not the obligation to pay bonuses to those who had extended their enlistments under the inducement of receiving the bonuses. The Navy had justifiable reason to be concerned that if Congress forced those in the critical nuclear power area to accept the VRB they had extended for, rather than allow them to increase their extensions and receive the SRB, many of these people would not reenlist at the six-year juncture.

tion of pay, allowances, and benefits which will accrue . . . during the continuance of service . . . ." (see p. 3 *supra*). The VRB was part of this pay, and it was intended that a specific VRB be offered the respondents when they were deciding whether or not to enter the AEF program. Any other interpretation of the variable bonus program would destroy the effectiveness of the award as a career inducement.[40] Had the Navy wished to limit the VRB payment to that in effect on the date an enlisted member began to serve his extension, they could have, as both the lower courts suggested (Pet. App. 24a, 75a), provided in the extension agreement that the variable bonus was subject to change.[41] Under the Navy's interpretation, they have the benefit of offering the award as an inducement, binding the enlisted man to an additional two years service and thereby ensuring that their critical rates will be adequately manned, and then avoiding payment of the bonus by terminating it at some point prior to the end of the initial four-year enlistment.[42]

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[40]It has been suggested by the Government that the respondents extended their enlistment obligation to qualify for entry into the Navy's AEF program. (Pet. Brief 35). Training in the AEF field may have been the "reason for extension," but clearly part of the consideration for extending, and as the lower courts found an inducement to extend, was the variable bonus.

[41]As the court of appeals noted, such a provision would have undoubtedly led to fewer extensions (Pet. App. 24a).

[42]Speaking of this interpretation, the court of appeals said that it had "the potential of producing serious inequities.

. . . .

[A]ppellants, by extending their enlistments at a time when the VRB award was at a multiple of four, may have contributed to the very satisfaction of Navy personnel requirements that led to termination of the VRB for the CTM rating." (Pet. App. 26a-27a n.32).

C. RESPONDENT JOHNSON BECAME ENTITLED TO RECEIVE THAT VARIABLE REENLISTMENT BONUS EFFECTIVE THE DATE HE EXTENDED HIS ENLISTMENT, AND CONGRESS NEITHER INTENDED TO NOR HAD THE POWER TO ABOLISH HIS RIGHT TO RECEIVE THE BONUS.

Although respondent Johnson extended his enlistment in consideration of the same "pay, allowances, and benefits" as the other respondents, his situation differs from the others in that prior to the time he began to serve his extension Congress passed the Bonus Revision Act of 1974. For reasons previously discussed, respondent Johnson became entitled to receive the VRB in effect on the date he extended his enlistment. The only disagreement among the courts on the entire VRB issue has been over whether Congress intended to or had the power to abolish the VRB entitlements of respondent Johnson and those similarly situated. (see pp. 16-17 n.28 *supra*).

The selective reenlistment bonus was created by Congress in an attempt to ensure that members in certain critical rates would receive a substantial incentive to reenlist at the "six to ten years of service time frame." H.R. Conf. Rep. No. 985, 93d Cong., 2d Sess. (1974), *reprinted in* [1974] U.S. Code Cong. & Ad. News 2998, 2999. The bonus was also available to those who reenlisted or agreed to extend after their first enlistment, provided that the enlisted member extended his service for at least three years. 37 U.S.C. § 308(a) (Pet. App. 86a). The SRB was designed to combine "the most desirable features of the Regular Enlistment and Variable Enlistment Bonuses," H.R. Rep. No. 985, 93d Cong., 2d Sess. (1974), *reprinted in* [1974] U.S. Code Cong. & Ad. News at 2993, and as a result the VRB program was terminated effective June 1, 1974. However, the Bonus Revision Act contains no provision prohibiting payment of bonuses after June 1, 1974 that were "contracted" for prior to June 1, 1974. The Joint Conference did state

that it did not "expect bonuses to be paid for services for which there was an existing obligation," (*id.* at 3000), but a review of the Conference Report clearly indicates that the "bonus" of which the members were speaking was the SRB. Therefore, if an enlisted member had agreed to extend prior to June 1, 1974, he would not be entitled to receive an SRB at the end of his first four-years. Congress gave him the opportunity to cancel his extension and reenlist for a period at least two years greater than the cancelled extension *(id.)*, but there is nothing in the Act to suggest that his entitlement to the variable bonus was in any way impaired. This interpretation of congressional intent is reinforced by the fact that the House version of the bill contained a multiple bonus restriction which was not adopted in the Conference Report (*id.* at 2999). Under this restriction a member would not have been allowed to receive total reenlistment bonuses for two or more reenlistments in excess of that bonus he would have received for one long reenlistment equal in length to the shorter reenlistments. Thus the individual in respondent Johnson's position had one of three choices (assuming his rate was SRB eligible): First, he could collect his VRB, serve his additional two years and be discharged; second, collect his VRB, serve his two years, and then reenlist under the SRB program; or third, cancel his extension and reenlist for a period at least two years greater than his extension and thereby obtain a larger SRB. Nowhere, however, is there any intent of the Congress to eliminate the first option.

Assuming arguendo that Congress did intend to retroactively abolish respondent Johnson's VRB entitlement when it eliminated the program, they did not possess the power to do so. Congress does have broad power under the Constitution pursuant to the "War Powers" clause. U.S. Const. art. I, §8. In providing and maintaining a Navy, the legislature has the power to

retroactively modify certain terms of the enlistment contract. *See, e.g., Selective Draft Law Cases,* 245 U.S. 366 (1918) (extending the period of military service during the war for those in the military service); *Schultz v. Clifford,* 303 F. Supp. 963 (D. Minn. 1968) (enlarging the length of time for which reserves could be called up for active duty). However, just as clearly, Congress does not have the power to "reduce expenditures by abrogating contractual obligations of the United States." *Lynch v. United States,* 292 U.S. 571, 580 (1934). As discussed above, when respondent Johnson obligated himself to serve an additional two years, he obtained a "contractual" right protected by the fifth amendment to receive the VRB in effect at that time.[43] The issue then is whether Congress passed the Bonus Revision Act under the provisions of the War Powers clause or whether it was passed as a cost-cutting measure. The stated purpose of the bill was "to provide authority to grant enlistment and reenlistment bonuses to enlisted personnel on a selective basis to fill critical and short skill requirements in the armed services in an all-volunteer environment." H.R. Rep. No. 857, 93d Cong., 2d Sess. (1974), *reprinted in* [1974] U.S. Code Cong. & Ad. News at 2984. This expressed purpose may appear, at first glance, to put the Act within the ambit of the War Powers clause.[44]

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[43] In the Court of Appeals the Government maintained that payment of the VRB was a mere "gratuity," and, analogous to social security payments and other government gratuities, it could be altered or terminated at any time. The court, however, held that once the respondent became bound to serve an additional two years the "gratuity" became a contractual right. (Pet. App. 56a-60a).

[44] There is what must be considered great irony in the legislative history of the Bonus Revision Act of 1974. *Larionoff* was decided by the district court on September 28, 1973. In amazingly rapid fashion the Senate Report on the Act was issued

[footnote continued]

However, throughout the entire legislative history the recurrent theme of reducing expenditures predominates. The House Report repeatedly talks of how the bill would result in "a significant savings in the future," represents an "opportunity to save money," and "would be a budgetary reduction in reenlistment costs." [1974] U.S. Code Cong. & Ad. News at 2986, 2990, 2993. Also Congress believed that the Act would put tighter controls on the services' unwarranted payment of incentive bonuses and thereby improve "management of reenlistment incentives" (*id.* at 2988-89). Clearly then the legislative purpose in enacting the 1974 Act was to reduce the cost of reenlistment bonuses. Under the holding of *Lynch v. United States, supra,* Congress does not possess the power to terminate VRB entitlement for such a purpose. Therefore, respondent Johnson's entitlement to receive his VRB is unaffected by the Bonus Revision Act.

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on December 19, 1973, the House Report on March 1, 1974 and the Conference Report on April 10, 1974. The Act, with a stated purpose that could possibly preclude future Larionoff's from recovering their VRB's, was passed on April 23 and 24, 1974 by the Senate and House respectively. Certainly if there ever existed the opportunity to tailor make legislative history to avoid future governmental liability, this was the case.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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REPLY BRIEF FOR THE PETITIONERS

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1. Respondents concede (Br. 22) that this case turns upon "an examination of Department of Defense directives concerning the [variable reenlistment bonus] program."[1]

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[1]Respondents contend (Br. 19-22) that Congress intended that a service member would be paid "the specific sum in effect at the time he makes the decision to extend his enlistment" (Br. 19). But as we indicated in our main brief (pp. 37-39), in enacting authorization for the award of variable reenlistment bonuses, Congress had focussed solely on the application of that program to reenlistments. We are not aware of any indication in the legislative history that either the Department of Defense or any member of Congress gave consideration to how, or even whether, the variable reenlistment bonus program would be applied to extensions of enlistment.

The variable reenlistment bonus program does apply to extensions of enlistment, but only as a consequence of 37 U.S.C. 906, which provides generally that "[a] member * * * who extends his enlistment * * * is entitled to the same pay and allowances as though he had reenlisted." Thus the Department of Defense was left with the task of accommodating the program to a group—service members who extend their enlistments—that had not been within the explicit contemplation of Congress when the program was enacted.

The pertinent Department of Defense instructions provide that "[a]n enlisted member is eligible to receive a Variable Reenlistment Bonus if he * * * [h]as completed at least 21 months of continuous active service other than active duty for training immediately prior to * * * extension of enlistment" and that "[m]embers * * * will receive the award level effective on the date of their * * * extension of enlistment * * *." DOD Instruction 1304.15, paras. V.B.1. and VI.A. (App. 59, 64). The crucial term in each of these two provisions is "extension of enlistment." If that term refers to the date the extension agreement is signed, then none of the named respondents is eligible for a variable reenlistment bonus, because none had completed 21 months of service before signing his extension agreement. See pp. 4-5, n. 4, of our main brief.[2] On the other hand, if the term "extension of enlistment" refers to the time at which service of the extension begins, none of the respondents is entitled to a variable reenlistment bonus because at that time the effective award level was zero. See p. 11 of our main brief.[3] In short, respondents are not aided by either construction.[4]

Respondents perforce rely (Br. 27-28) on a regulatory exception to the general rule that service members receive a bonus computed on the basis of the award level effective on the date of their extension of enlistment. That reliance,

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[2]Respondents' argument (Br. 24-27) that "extension of enlistment" refers to the date on which the extension agreement is signed therefore is self-defeating.

[3]Moreover, by the time respondent Johnson began service of his extension, Congress had repealed the variable reenlistment bonus program. See p. 11, n. 23, of our main brief.

[4]For the reasons stated in our main brief (pp. 26-30), however, the term "date of * * * extension of enlistment," properly construed, refers to the date on which service of the extension begins.

however, derives from a misunderstanding of how the exception operates. The exception on which respondents rely pertains to service members whose military specialties have been designated for reduction or termination of award level. See DOD Instruction 1304.15, paras. V.B.1.f. and VI.A. (App. 61, 64). When service of the extension begins after the 90-day advance notification of reduction or termination of award but before actual reduction or termination, the general rule is that the service member is entitled to the higher award level that is still in effect; the exception is that if the extension agreement was signed after receipt of the 90-day notice, the bonus is computed as if the award level had been reduced or terminated on the date of receipt of the notice. See pp. 30-34 of our main brief. In short, the exception upon which respondents rely serves only to reduce the bonuses of the service members to which it applies. It does not avail respondents.[5]

Thus, respondents' claims to variable reenlistment bonuses are governed by the general rule that service members "receive the award level effective on the date of their * * * extension of enlistment * * *." DOD Instruction 1304.15, para. VI.A. (App. 64).[6] As we have demonstrated (p. 2, *supra*), whether the term "extension of

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[5]The exception does not, in any event, apply to respondents, for they signed their extension agreements before receipt of the 90-day notice and began service of their extensions after the notice of termination became effective. See pp. 4-5, n. 4, and p. 11 of our main brief.

[6]Respondents' extension agreements were entered into in consideration of "the pay, allowances, and benefits which will accrue" (*e.g.*, App. 157) under the applicable statutes and regulations. Thus the agreements promise nothing more than is provided by the regulations.

enlistment" refers to the signing of the extension agreement or to the commencement of service of the extension, respondents take nothing under that rule. Accordingly, they are not entitled to the payment of variable reenlistment bonuses.

2. Respondent Johnson argues (Br. 31-34) that if, at the time he signed his extension agreement, he acquired a vested right to payment of a variable reenlistment bonus computed on the basis of the award level then in effect,[7] Congress acted unconstitutionally in terminating the variable reenlistment bonus program in a manner that deprived him of payment. As we have shown, however, the governing military regulations did not confer upon respondents vested rights to payment of variable reenlistment bonuses. See pp. 1-4, *supra*; pp. 19-41 of our main brief.[8] We would concede that

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[7]Respondents throughout characterize their claim as one to "the specific sum" (*e.g.*, Br. 19) in effect at the time the extension agreements were signed. But "[t]he amount of the bonus was calculated under a formula, so that the exact amount was not predictable at the time the reenlistment [*sic*] extension agreements were signed * * *." *Carini* v. *United States*, 528 F. 2d 738, 740 (C.A. 4), petition for a writ of certiorari pending, No. 75-1695.

[8]Respondents argue (Br. 28-29) that the legislative history of the Bonus Revision Act, Pub. L. 93-277, 88 Stat. 119, in which Congress terminated the variable reenlistment bonus program, indicates the Navy's understanding that persons in respondents' positions had a vested right to payment of the bonus. They rely upon a statement in the Conference Report indicating the Navy's "concern that the language of the bill might be interpreted to require it to abrogate an understanding it had with enlistees * * *." H.R. Rep. No. 93-985, 93d Cong., 2d Sess. 4 (1974). But respondents have overlooked the preceding sentence in the Report, which explains that the "understanding" in question related to "cases where commitment has been made to a man with a four-year enlistment and a two-year extension that he can cancel the two-year extension and reenlist for four years and receive a reenlistment bonus for the four-year reenlistment." *Ibid.* The Conference Committee met the Navy's particularized concern with respect to such commitments by

if the regulations had conferred such a vested right, the absence of an appropriate saving clause in the legislation terminating the variable reenlistment bonus program would cast doubt on the constitutional validity of that legislation. Cf. *Perry* v. *United States*, 294 U.S. 330; *Lynch* v. *United States*, 292 U.S. 571.[9] But this consideration further supports our reading of the governing regulations, a reading that does not draw into question the validity of an Act of Congress. Cf. *Crowell* v. *Benson*, 285 U.S. 22, 62 ("When the validity of an act of Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided."). See generally *Ashwander* v. *Tennessee Valley Authority*, 297 U.S. 288, 346-348 (Brandeis, J., concurring).

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stating that "full entitlement to SRB [*i.e.*, the new selective reenlistment bonus] will be authorized for personnel who have already agreed to an extension period prior to the enactment of the legislation if they subsequently cancel this extension prior to its becoming operative and reenlist for a period of at least two years beyond the period of the canceled extension." *Ibid.* The Report does not refer to variable reenlistment bonuses, and nothing in the Report suggests that either the Navy or the Committee believed that persons in respondents' positions had acquired vested rights to payments of such bonuses. See *Collins* v. *Rumsfeld*, 542 F. 2d 1109, 1111 (C.A. 9), petition for a writ of certiorari pending *sub nom. Saylors* v. *United States*, No. 76-677.

[9]The Navy presumably could have written its extension agreements in a manner that, while leaving open the possibility that Congress would terminate the bonus program altogether, nevertheless precluded the Navy from reducing the award level applicable to service members' military specialties. See *Carini* v. *United States*, *supra*, 528 F. 2d at 741, n. 7. But we see no basis for construing the agreements and regulations as precluding the Navy from reducing the applicable award levels as its personnel requirements changed.

For the reasons stated here and in our main brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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